

**LOCAL  
GOVERNMENT LAW  
AND  
ADMINISTRATION**

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**ANNUAL CONTINUATION VOLUME, 1938**





# LOCAL GOVERNMENT LAW AND ADMINISTRATION IN ENGLAND AND WALES

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## PUBLISHERS' NOTE

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THE main titles of MacMillan's Local Government Law and Administration will be completed in two further volumes, which will be numbered 12 and 13. Volume 14 will comprise the comprehensive index.

The present volume, number 15, is the first of a series of annual continuation volumes, and contains the relevant Statutes, Orders, Memoranda and Circulars, and Cases of the year 1938. A note of such cases as have been affirmed, reversed, or varied on appeal has been made, up to the reports available in December, 1939. The usual annotation of these appeals will appear in the volume for 1939.

The Legislation of 1938 again reflects the international situation, and special provisions both of a military and of a financial nature may no doubt be expected to continue in succeeding years.

By the Blind Persons Act, 1938 (c. 11) (title "BLIND PERSONS"), the age at which non-contributory old age pensions under the Old Age Pensions Act, 1936, may be paid to blind persons is lowered from 50 to 40 years.

The Population (Statistics) Act, 1938 (c. 12) (title "REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES"), provides for the registration of further statistical information as to the social and civil condition of the population by requiring additional particulars to be furnished on the registration of births and deaths.

By the Rating and Valuation (Postponement of Valuations) Act, 1938 (c. 19) (title "RATES AND RATING"), the making of the third new valuation list to be made under the Rating and Valuation Act, 1925, is postponed until 1941. By the Rating and Valuation (Air-Raid Works) Act, 1938 (c. 65) (*ibid.*), provision is made to prevent expenditure on property for the purpose of providing protection against air-raids from increasing the rateable value of that property.

The Street Playgrounds Act, 1938 (c. 37) (title "HIGHWAYS"), empowers local authorities to close roads to vehicular traffic in order to enable them to be used as playgrounds for children.

The Food and Drugs Act, 1938 (c. 56) (title "FOOD AND DRUGS"), consolidates and amends the law relating to the sale of food and drugs.

The Fire Brigades Act, 1938 (c. 72) (title "FIRE PROTECTION"), repeals the scattered provisions relating to the organisation of fire brigades, and contains new provisions designed to secure an efficient organisation throughout the country.

It has been considered that for the purposes of the continuation volumes, certain minor headings should be brought together. Where, as a consequence of this re-arrangement, a heading in the main body of the work is dealt with under another heading in the continuation volumes, a cross heading has been inserted.

This volume also incorporates Skottowe's annual "Local Government," though for the benefit of subscribers taking this work who do not subscribe to MacMillan's Local Government Law and Administration, copies will be supplied in the same binding as heretofore. Subscribers to MacMillan's Local Government Law and Administration will receive copies on thick or thin paper and bound to match their sets.

In due course a Cumulative Supplement will be issued each year bringing up to date the titles in the main volumes and continuation annuals.

BUTTERWORTH & CO. (PUBLISHERS), LTD.

*December, 1939.*

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## TABLE OF ABBREVIATIONS

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All England Law Reports	..	..	..	..	..	..	All E. R.
Attorney-General	..	..	..	..	..	..	A.-G.
Brothers .. ..	..	..	..	..	..	..	Bros.
Company	..	..	..	..	..	..	Co.
Corporation	..	..	..	..	..	..	Corpn.
Home Office	..	..	..	..	..	..	H.O.
Justices .. ..	..	..	..	..	..	..	JJ.
Limited .. ..	..	..	..	..	..	..	Ltd.
London County Council	..	..	..	..	..	..	L.C.C.
Local Government Act	..	..	..	..	..	..	L.G.A.
Medical Officer of Health	..	..	..	..	..	..	M.O.H.
Ministry of Agriculture and Fisheries	..	..	..	..	..	..	M. of A.
Ministry of Health	..	..	..	..	..	..	M. of H.
Ministry of Transport	..	..	..	..	..	..	M. of T.
Public Health Acts	..	..	..	..	..	..	P.H.A.
Railway Company	..	..	..	..	..	..	Rail. Co.
Rating and Valuation Act	..	..	..	..	..	..	R. & V.A.
Rural District Council	..	..	..	..	..	..	R.D.C.
Statutory Rules and Orders	..	..	..	..	..	..	S.R. & O.
Urban District Council	..	..	..	..	..	..	U.D.C.

## THE ENGLISH AND EMPIRE DIGEST

In addition to the usual citation of the reports of cases in the footnotes, there will be found a reference to the volume, page, and case number at which the case appears in the Digest. Thus:

*Airdrie Magistrates v. Lanark County Council*, [1910] A.C.  
286; 41 Digest 8, 52.

## HALSBURY'S COMPLETE STATUTES OF ENGLAND

References to Public Acts of Parliament are followed by a reference to the volume and page at which the Act or section of the Act appears in Halsbury's Complete Statutes of England. Thus:

The Local Government Act, 1933; 26 Halsbury's Statutes  
295.

## ALL ENGLAND LAW REPORTS

After cases heard since February, 1936, references are given to this series of reports thus:

*Bedford (Duke) v. Bucks Water Board*, [1938] 1 All E. R. 199.



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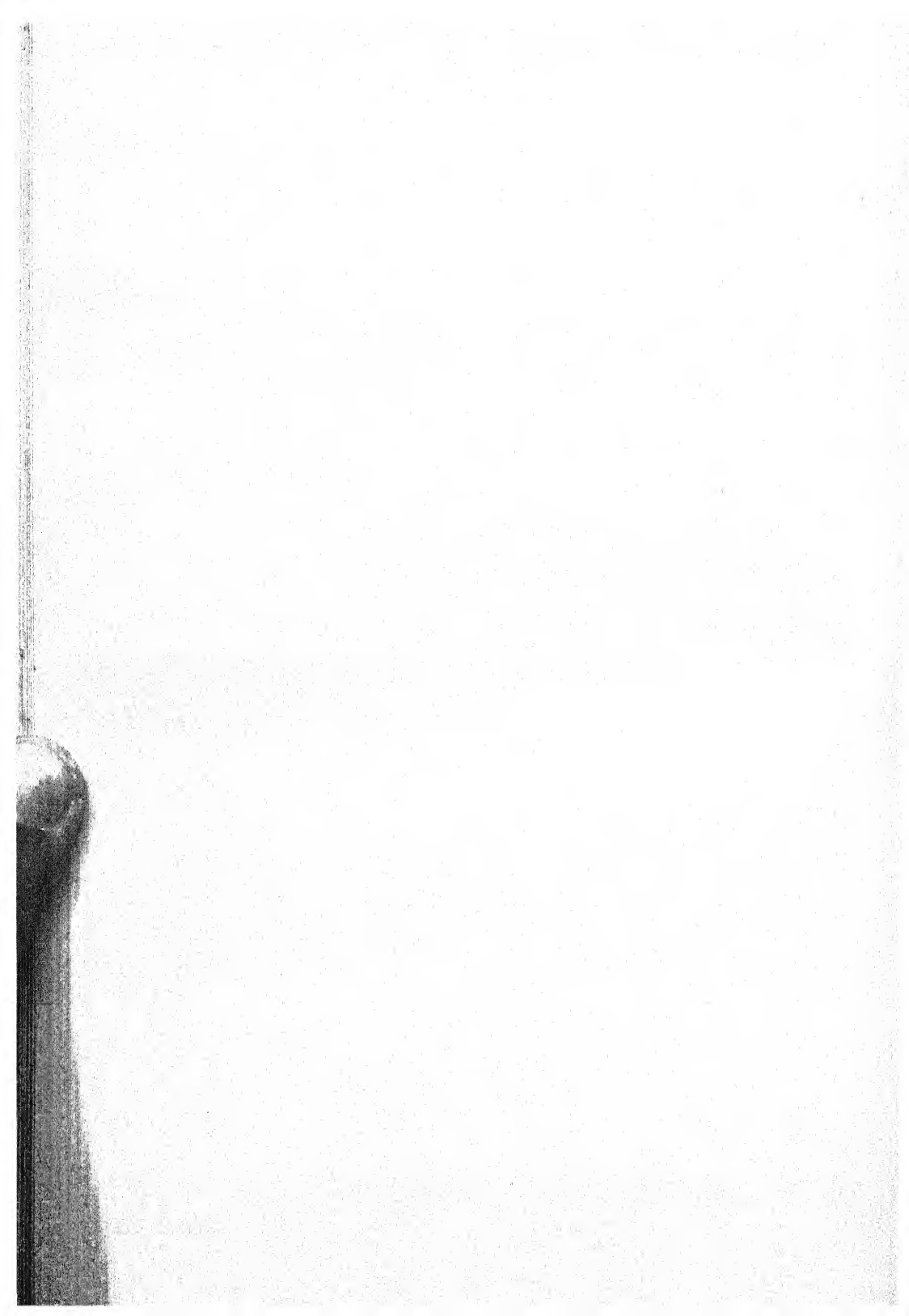
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## ACCIDENTS

*See ACTIONS BY AND AGAINST LOCAL AUTHORITIES.*

## ACCOUNTS OF LOCAL AUTHORITIES

*See FINANCE.*

## ACQUISITION OF LAND

*See LAND, ACQUISITION, SALE, ETC., OF.*

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## ACTIONS BY AND AGAINST LOCAL AUTHORITIES

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## CASES

*Production of Documents to Councillor—Documents Relating to Pending  
Litigation—Sufficient Production for Proper Discharge of Duties—  
Prejudice of Council's Interest by Production.*

A borough council and a club, the owners of a large estate in the borough, made an agreement with regard to the development of the land. The matter attracted public interest, and an action against the council was commenced by the Attorney-General at the relation of a private individual claiming a declaration that the agreement was *ultra vires*. The applicant, a councillor of the borough, complained that he had been refused access to the papers having reference to the action. The conduct of the action was referred to a special committee of the council, upon which the applicant was invited to serve, but he declined to do so. The applicant then asked for production of the Town Clerk's notes on certain documents connected with the case, minutes of the



committee which had negotiated the agreements with the club, and all correspondence with the club. Production of these documents was refused, the council acting upon the advice of leading counsel :—

*Held*: the right of a councillor to production is restricted to the production of such documents as will enable him properly to carry out his duties as councillor, and, upon the facts, the applicant had not by the refusal to disclose the documents here in question been prevented from the proper discharge of any of his duties. On the other hand, if the documents had been disclosed, the interests of the council in the pending litigation might have been prejudiced. The applicant was not, therefore, entitled to production of the documents.—*R. v. BARNES BOROUGH COUNCIL, Ex p. CONLAN*, [1938] 3 All E. R. 226; 82 Sol. Jo. 626; 36 L. G. R. 524. [1]

*Excavation by Sanitary Authority—Nonfeasance—Excavation for Drainage Purposes—Accident Due to Subsequent Subsidence Three Years after Work Completed.*

In July, 1933, defendants, who were the local sanitary authority as well as the local highway authority, had made a trench in a highway for the purpose of executing certain drainage work. The excavation was filled in, and in 1935, when the surface was tar-sprayed and chippings were rolled in with a steam-roller, the surface was said to be level. In 1936, a depression had formed at the place where the work had been done, and the jury found that the highway at this place was dangerous to those using it with due care. The jury also found that, although the original work was executed without negligence, the dangerous condition was due to the work of defendants, and that defendants were negligent in not discovering and taking steps to remedy the danger. Plaintiff, having been thrown from his bicycle and injured by reason of the subsidence of the road at the place in question, brought an action against defendants as the authority responsible for the repair of the road :—

*Held*: there was a duty on defendants as the sanitary authority to make good the inevitable subsidence resulting from their work in 1933. They were negligent in not discovering, and in not taking steps to remedy, the danger, and this negligence amounted to misfeasance.

Decision of ATKINSON, J. ([1938] 1 All E. R. 79), affirmed.—*NEWSOME v. DARTON URBAN DISTRICT COUNCIL*, [1938] 3 All E. R. 93; 159 L. T. 153; 102 J. P. 409; 54 T. L. R. 945; 82 Sol. Jo. 520; 36 L. G. R. 506, C. A. [2]

*Common Employment—Amalgamation of Undertakings—Transport Vehicles—Whether Doctrine Applies to Transport Vehicles en route.*

Plaintiff was a bus conductor who was injured as a result of a collision between his bus and a tram, due to the negligence of the tram driver. Both plaintiff and the tram driver were in the employ of the London Passenger Transport Board, and it was contended that the doctrine of common employment applied. Against this contention, it was argued that, as the crews of two ships belonging to the same company were not in common employment, the doctrine was not applicable to these circumstances. Plaintiff had been in the service of the London General Omnibus Co. before that company was absorbed in the London Passenger Transport Board :—

*Held*: the doctrine of common employment applied, and plaintiff was not entitled to recover.—*METCALFE v. LONDON PASSENGER TRANS-*



PORT BOARD, [1938] 2 All E. R. 352; 107 L. J. K. B. 406; 159 L. T. 35; 102 J. P. 309; 54 T. L. R. 678; 82 Sol. Jo. 296; 36 L. G. R. 285.

Decision of MACNAGHTEN, J., reversed. The doctrine of common employment did not apply to this case. The reversal by the House of Lords of the decision of the Court of Appeal in *Radcliffe v. Ribble Motor Services, Ltd.*, [1939] 1 All E. R. 637; 160 L. T. 420, is the real cause for reversing the judgment of the lower court in this case:— [1939] 2 All E. R. 542; 108 L. J. K. B. 733; 160 L. T. 599; 103 J. P. 246; 55 T. L. R. 700; 83 Sol. Jo. 357, C. A. [3]

*Limitation of Actions—Acts Within Statutory Protection—Entertainment Pavilion Erected and Carried on by Local Authority—Plaintiff Injured by Falling Poster-frame—Remoteness of Damage—Public Authorities Protection Act, 1893 (c. 61), s. 1.*

By virtue of the powers contained in the Torquay Harbour Order, 1910, as confirmed by the Pier and Harbour Order Confirmation Act (No. 2), 1910, defendant corporation had erected and were carrying on an entertainment pavilion. While plaintiff was attempting to buy a ticket at the booking-office of this pavilion, a poster-frame fell on her and injured her. In an action for damages for personal injuries, defendants contended that, as they were a public authority, the action should have been commenced within the period of six months prescribed by the Public Authorities Protection Act, 1893, s. 1.

Plaintiff's daughter, who before the accident had had a whole-time job, which enabled her to pay plaintiff 17s. 6d. per week towards her keep, had to give up her work for a time in order to look after her mother, who thereby lost this weekly contribution. It was contended that this source of damage was too remote:—

*Held:* (i) the Pier and Harbour Order Confirmation Act (No. 2), 1910, merely enabled the corporation to build this pavilion, and did not compel them either to build it, or, having built it, to carry it on. Their conduct in so doing was voluntary, and they were, therefore, not protected by the Public Authorities Protection Act;

(ii) the loss of the daughter's contribution to the home was a source of damage that was properly included, for which plaintiff was entitled to recover.—*HAWKES v. TORQUAY CORPORATION*, [1938] 4 All E. R. 16. [4]

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## ADULTERATION OF FOOD

See FOOD AND DRUGS.

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## ADVERTISEMENTS

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## CASES

*Buildings—Advertisement Hoarding Near Highway—Surrey County Council Act, 1931 (c. ci), s. 67.*

Appellants erected on their land at the side of a main road in the

county of Surrey an advertisement hoarding without the consent of the county council. The Surrey County Council Act, 1931, s. 67, enacted that any person constructing, forming or laying out any street or means of access, or erecting any building in contravention of the provisions of that section, should be liable to a penalty :—

*Held* : the advertisement hoarding was a building within the meaning of the section.—*SUPER SITES, LTD. v. KEEN*, [1938] 2 All E. R. 471 ; 36 L. G. R. 331, D. C. [5]

*Licence—Right of Local Authority to Charge Fee for Grant of Licence—*  
*“ Under and subject to such terms and conditions to be therein prescribed as the corporation may deem proper ”—Liverpool Corporation (General Powers) Act, 1930 (c. xcii), s. 29.*

Under the provisions of a local Act, defendants were granted licences for the erection of advertisements on houses, and in respect of each licence the corporation asked for a fee, in some cases of 10s. 6d. and in others of £1 1s. It was contended that they were entitled to do so because the Act provided that the licences might be granted under and subject to such terms and conditions as the corporation might deem proper :—

*Held* : upon the construction of the Act, the terms and conditions could not include the payment of a fee in respect of the granting of the licence.—*LIVERPOOL CORPORATION v. ARTHUR MAIDEN, LTD.*, [1938] 4 All E. R. 200. [6]

## AERODROMES, AIR NAVIGATION AND AIRCRAFT

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### ORDERS, CIRCULARS AND MEMORANDA

#### AIR NAVIGATION (COMPULSORY ACQUISITION OF LAND) REGULATIONS, 1936

*S. R. & O., 1938, No. 207*

*October 19, 1936*

In exercise of the powers conferred upon him by Part IV of the First Schedule to the Air Navigation Act, 1936 (hereinafter referred to as “ the Act ”) the Secretary of State for Air hereby makes the following Regulations :—

1. A compulsory purchase order made under Section 9 of the Act shall be in the form set out in Part I of the Schedule to these Regulations, or in a form substantially to the like effect.

2. The notice which is required under the provisions of paragraph 3 of Part I of the First Schedule to the Act to be published in a local newspaper in regard to the making of a compulsory purchase order shall be in the form set out in Part II of the Schedule to these Regulations, or in a form substantially to the like effect.

3. The notice which is required under the said paragraph to be served on every owner, lessee or occupier, shall be in the form set out in Part III of the Schedule to these Regulations, or in a form substantially to the like effect.

4. The notice required to be given under paragraph 1 of Part III of the First Schedule to the Act that a compulsory purchase order has been confirmed by the Secretary of State shall be in the form set out in Part IV of the Schedule to these Regulations, or in a form substantially to the like effect.

5. These Regulations may be cited as the Air Navigation (Compulsory Acquisition of Land) Regulations, 1936. [7]

## SCHEDULE

### PART I

#### FORM OF COMPULSORY PURCHASE ORDER MADE BY A LOCAL AUTHORITY OR BY TWO OR MORE LOCAL AUTHORITIES UNDER SECTION 9 OF THE AIR NAVIGATION ACT, 1936

##### *Air Navigation Acts, 1920 and 1936*

The \* (in this Order referred to as "the { Authorities " } Authority " } hereby make the following Order :—

1. Subject to the provisions of this Order the { Authorities " } Authority " } are hereby authorised to purchase compulsorily for the purpose of † the lands described in the Schedule hereto, which lands are coloured on a Map marked and sealed with the seal of the { Authorities " } Authority " } and deposited at the offices of the { Authorities " } Authority " }

2. The following enactments, namely

- (i) the Lands Clauses Acts (except Section 92 and Sections 127 to 132 of the Lands Clauses Consolidation Act, 1845) as modified, varied or amended by Part I of the First Schedule to the Air Navigation Act, 1936 ;
- (ii) the Acquisition of Land (Assessment of Compensation) Act, 1919, as modified, varied or amended as aforesaid, and
- (iii) Sections 77 to 85 of the Railways Clauses Consolidation Act, 1845, are, subject to the necessary adaptations, hereby incorporated

\* Insert description of the Local Authority or Local Authorities.

† Insert purpose for which the lands are to be acquired.



## PART III

FORM OF NOTICE TO OWNERS, LESSEES AND OCCUPIERS OF THE INTENDED  
SUBMISSION OF A COMPULSORY PURCHASE ORDER TO THE SECRETARY OF  
STATE FOR AIR FOR CONFIRMATION*Air Navigation Acts, 1920 and 1936*

(Title of Order)

To (name and address)

{ Owner  
Lessee  
Occupier

of (description of property).

Take notice that the \* in  
pursuance of the powers vested in them by the Air Navigation Acts, 1920  
and 1936, on the day of , 19 , made  
an Order, which is about to be submitted to the Secretary of State for Air  
for confirmation, authorising them to purchase compulsorily for the purpose  
of † the lands described in  
the Schedule hereto.

A copy of the said Order and of the map referred to therein has been  
deposited at  
where they may be seen, without payment of fee, between the hours of  
and

Any objection to this Order must be addressed to the Secretary, Air  
Ministry, Adastral House, Kingsway, London, W.C.2, before ‡  
It must be in writing, and the grounds on which it is made must be  
stated.

If no objection is duly made by any of the persons upon whom notices  
are required to be served, or if all objections so made are withdrawn, or  
if the Secretary of State is satisfied that every objection duly made relates  
exclusively to matters which can be dealt with by the arbitrator by whom  
the compensation is to be assessed, the Secretary of State may, if he thinks  
fit, confirm the Order with or without modification. In any other case,  
the Secretary of State is required, before confirming the Order, to cause a  
local inquiry to be held, and to consider any objection not withdrawn and  
the report of the person who held the inquiry. The Secretary of State may  
then confirm the Order with or without modification.

*Schedule*

(Here insert description of the lands comprised in the Order)

Dated this day of , 19 .

Signature(s) of Clerk(s)

of the Local { Authorities.  
Authority.

\* Insert description of the Local Authority or Local Authorities.

† Insert purpose for which the lands are to be acquired.

‡ Insert date 14 clear days from the service of the notice.

## PART IV

FORM OF NOTICE THAT A COMPULSORY PURCHASE ORDER HAS BEEN CONFIRMED  
BY THE SECRETARY OF STATE FOR AIR*Air Navigation Acts, 1920 and 1936*

(Title of Order)

Notice is hereby given that the Secretary of State for Air, in pursuance of the powers vested in him by the Air Navigation Act, 1936, on the day of , 19 , confirmed [with modifications] † an Order submitted to him by the \*  
(in this notice referred to as "the { Authorities }") } authorising the { Authorities } to purchase compulsorily for the purpose of ‡  
{ Authority } the lands described in the Schedule hereto.

A copy of the Order, as confirmed, and of the map referred to therein has been deposited at  
where they may be seen, without payment of fee, between the hours of  
and

The Order will become operative at the expiration of six weeks from the date of publication of this notice, but if proceedings in the High Court are instituted within that period by a person desirous of questioning the validity of the Order, or of any provision contained therein, the Court may, if satisfied that the Order or any provision contained therein is not within the powers of the Air Navigation Act, 1936, or that the interests of the applicant have been substantially prejudiced by any requirement of that Act or of any regulation made thereunder not having been complied with, quash the Order or any provision contained therein, either generally or in so far as it affects any property of the applicant.

*Schedule*

(Here insert description of the lands comprised in the confirmed Order.)

Dated this                      day of                      , 19 .

Signature(s) of Clerk(s)

of the Local { Authorities.  
Authority.

[8]

\* Description of the Local Authority or Local Authorities.

† The words in brackets to be omitted if no modifications were made.

‡ Insert purpose for which the lands are to be acquired.



## PUBLIC HEALTH (AIRCRAFT) REGULATIONS, 1938

S. R. &amp; O., 1938, No. 299

April 7, 1938

92966

The Minister of Health in the exercise of his powers under section 143 of the Public Health Act, 1936, and of all other powers enabling him in that behalf hereby makes the following regulations after consultation with the Secretary of State and, so far as they apply to officers of customs and excise, with the consent of the Commissioners of Customs and Excise :—

## PART I.—INTRODUCTORY

*Short title and commencement*

1. These regulations may be cited as the Public Health (Aircraft) Regulations, 1938, and shall come into operation on the first day of July, 1938.

*Interpretation*

2.—(1) The Interpretation Act, 1889, applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

(2) Nothing in these regulations shall apply to any aircraft the property of a foreign state or to the crew thereof or to any aircraft the property of His Majesty or to the crew thereof.

(3) In these regulations, unless the context otherwise requires—

“the Convention” means the International Sanitary Convention for Aerial Navigation, 1933;

“the Minister” means the Minister of Health;

“responsible authority” means—

(a) as respects an aerodrome maintained by a local authority including a county council the maintaining authority;

(b) as respects any aerodrome or place in a port health district other than such an aerodrome as aforesaid the port health authority for such district;

(c) as respects any other aerodrome or other place the local authority for the district in which such aerodrome or place is situated, that is to say the common council of the city of London or the council of a metropolitan borough, municipal borough, or urban or rural district as the case may be;

“area” in relation to an authority means the area comprising every aerodrome and other place as respects which that authority is the responsible authority;

“aerodrome” includes a place for the landing of aircraft on water;

“placed under surveillance” means that a person is required to submit to medical examination with a view to establishing his state of health;

"crew" includes any person having duties on board an aircraft in connection with the flying or the safety of the flight of the aircraft or employed on board in any way in the service of the aircraft, the passengers, or the cargo;

"commander" includes any person for the time being in charge of or in command of an aircraft;

"customs aerodrome" means an aerodrome for the time being approved by the Secretary of State as a customs aerodrome for the purposes of the Acts relating to Customs;

"sanitary aerodrome" means a customs aerodrome which has been recognised by the Minister in accordance with the provisions of paragraph (4) of this regulation;

"customs officer" includes any person acting under the authority of the Commissioners of Customs and Excise;

"medical officer" means the medical officer of health of a responsible authority or a registered medical practitioner acting under the direction of such an authority, whether in place of or as an assistant to the medical officer of health or otherwise, for the purpose of executing these regulations or any of them;

"foreign" means situate elsewhere than in Great Britain, Ireland, the Channel Islands or the Isle of Man;

"foreign state" means any state not a member of the British Commonwealth of Nations;

"prescribed measures" in relation to plague, cholera, typhus fever or smallpox in England and Wales means such of the measures set out in the schedule to these regulations as are appropriate, and in relation to yellow fever in England and Wales or plague, cholera, yellow fever, typhus fever or smallpox outside England and Wales, means such measures prescribed or permitted by the Convention as are appropriate;

"infected" in relation to an aircraft arriving at an aerodrome or other place means an aircraft which has on board a case of plague, yellow fever, typhus fever or smallpox or a case presenting clinical signs of cholera, or which has had such a case on board and has not since been subjected to the prescribed measures;

"aircraft coming from an infected locality" in relation to an aircraft arriving at an aerodrome means an aircraft—

- (a) which left within the preceding six days a locality infected with plague; or
- (b) which left within the preceding five days a locality infected with cholera; or
- (c) which left within the preceding twelve days a locality where typhus fever is epidemic; or
- (d) which left within the preceding fourteen days a locality where smallpox is epidemic; or
- (e) arriving from a locality included by reason of yellow fever in the list kept by the medical officer of the district in which the aerodrome is situated pursuant to regulation 4, or from a locality in close relation with an endemic centre of yellow fever after a voyage of less than six days or after a longer voyage if there is reason to believe that the aircraft may be carrying adult mosquitoes emanating from the said locality;



“infectious disease” means any epidemic or acute infectious disease but does not include venereal disease.

(4) The Minister on being satisfied that there are available at a customs aerodrome—

- (a) an organised medical service with a medical officer and at least one assistant officer acting under his direction ;
- (b) a place for medical inspection ;
- (c) either a laboratory for the examination of suspected material or equipment for taking and despatching such material for examination in a laboratory ;
- (d) facilities for the isolation, transport and care of the sick, for the isolation of contacts separately from the sick and for carrying out any other prophylactic measure in suitable premises either within the aerodrome or in proximity to it ;
- (e) the apparatus necessary for carrying out disinfection, disinsecting, deratisation and any other measures prescribed by these regulations ;
- (f) a sufficient supply of wholesome drinking water ; and
- (g) a proper and safe system for the disposal of excreta and refuse, and for the removal of waste water ;

and that the aerodrome is as far as possible protected from rats, may recognise such aerodrome as being for the time being a sanitary aerodrome and he may designate any sanitary aerodrome as a local area in accordance with article 8 of the Convention.

Every such recognition and designation shall have effect until it is withdrawn by the Minister and notice of every such recognition, designation and withdrawal shall be published in the London Gazette.

#### *Execution of regulations*

3.—(1) Subject to paragraph (2) of this regulation every responsible authority shall through the medical officer and any other officers whom they may appoint for the purpose enforce and execute these regulations throughout their area and shall make such inquiries and take such other steps as may seem to them to be necessary for securing the due observance of these regulations or any of them.

(2) Where—

- (a) an aerodrome is situate in the areas of more than one responsible authority or is maintained by more than one such authority, or
- (b) an aerodrome maintained by one responsible authority is situate in the district of another such authority,

the authorities may agree, on such terms and conditions as they think fit, and with the approval of the Minister, that one of them shall undertake the execution of, and appoint the officers for executing, the whole or specified provisions of these regulations at that aerodrome.

In any case to which (a) of this paragraph applies, the Minister may, in the absence of agreement between the authorities, determine which of the said authorities shall undertake any such functions or the terms and conditions subject to which they shall do so.

Any aerodrome to which any such agreement as approved by the Minister or any such determination of the Minister applies shall be

deemed to be in the area of the authority by which such functions are undertaken in accordance therewith, and that authority shall be deemed to be the responsible authority for the purposes of these regulations.

#### *List of infected localities*

4. The medical officer of a district comprising a customs aerodrome shall from time to time prepare and keep up to date a list of localities both in the United Kingdom and elsewhere which are infected or believed to be infected with plague (human or rodent), cholera or yellow fever, or in which typhus fever or smallpox is believed to be epidemic, and shall supply copies of every such list and any amendment thereof to the customs officers employed in the aerodrome and to the person in charge of the aerodrome. In the preparation and amendment of such list, the medical officer shall take into account all information sent to him from time to time by the Minister. [9]

### PART II.—AIRCRAFT ARRIVING

#### *Notification of illness*

5. If during the voyage of an aircraft which arrives at an aerodrome from a foreign place there has been on board either a death otherwise than as the result of an accident, or a case or suspected case of infectious disease, and the commander of the aircraft has not already informed the customs officer or medical officer of that fact by wireless or otherwise, the commander shall so inform the customs officer or medical officer, whichever shall first visit the aircraft after its arrival.

The customs officer or medical officer on being informed as aforesaid shall make such inquiries of the commander as appear to him to be necessary.

6. The person in charge of the aerodrome, upon receipt of information that a person on board an aircraft approaching or arriving at the aerodrome has symptoms which may be indicative of infectious disease other than tuberculosis, or that there are circumstances in relation to any such aircraft requiring the attention of the medical officer, shall forthwith notify the medical officer and the customs officer to that effect.

#### *Infected aircraft or aircraft coming from an infected locality*

7.—(1) If an infected aircraft or an aircraft coming from an infected locality arrives at an aerodrome the appropriate measures set out in the schedule to these regulations in relation to plague, cholera, typhus fever or smallpox as the case may be shall be carried out, or if yellow fever is the cause of infection the aircraft shall be subjected to such of the measures prescribed or permitted in relation to that disease by the Convention as the medical officer considers necessary.

(2) Any aircraft which has become subject to the provisions of paragraph (1) of this regulation shall remain subject to control under these regulations until it has been examined by the medical officer and until any measures which may be required to be carried out in pursuance of that paragraph (other than measures in relation to any person who has disembarked from the aircraft) have been completed.

*Detention of aircraft and persons therein*

8.—(1) Where an aircraft arrives at an aerodrome from a foreign place and it appears to the customs officer from information given to him by the commander or from answers to inquiries made by him or otherwise—

- (a) that during the voyage there has been on the aircraft a death otherwise than as a result of an accident, or a case of illness caused or suspected to be caused by disease of an infectious nature ; or
- (b) that the aircraft has come from or has called at a locality included in the list referred to in regulation 4 ; or
- (c) that during the voyage death not attributable to poison or other measures for destruction has occurred amongst rats or mice on the aircraft ;

he shall direct that the aircraft and the passengers and crew shall be detained and he shall report the matter forthwith to the person in charge of the aerodrome and to the medical officer.

(2) The medical officer may require any person who has been so detained before he leaves the aerodrome to state his name and his intended destination and address, and to give any other information which the medical officer may think necessary for transmission to the local authority of the district within which the intended place of destination of the person is situate.

(3) If a person having been required to state his intended destination and address before being permitted to leave an aerodrome, either is unable to do so or arrives, within a period not exceeding fourteen days after landing to be specified to him by the medical officer, at a place other than that which he has so stated, he shall immediately after his arrival forward particulars of his actual place of arrival and his address to the medical officer of the area in which he left the aircraft.

(4) The medical officer may direct that an aircraft arriving from a foreign place shall be detained for medical inspection and may deliver a notice in writing to that effect to the customs officer who, if he visits the aircraft before the medical officer, shall cause the notice to be delivered to the commander. The medical officer shall inform the person in charge of the aerodrome of any directions given by him under this paragraph.

9. The detention of an aircraft by a customs officer under these regulations shall cease as soon as the medical officer has duly inspected the aircraft or caused it to be inspected or has given notice to the customs officer that he does not propose to do so, or, if the inspection has not been begun within three hours after the customs officer gave the direction for its detention, on the expiration of that period :

Provided that nothing in this regulation shall affect the exercise of any powers of the medical officer in regard to the detention of aircraft.

10. The medical officer shall—

- (a) inspect or cause to be inspected, on its arrival, any aircraft which has come from or called at any foreign locality which is included in the list prepared pursuant to the provisions of regulation 4 and shall inspect any other aircraft which has come from or called at a foreign locality and on which there has occurred during the voyage any case of illness which was or may have been plague, cholera, yellow fever,

typhus fever or smallpox, or on which rodent plague has occurred or been suspected during the voyage ;

- (b) as soon as possible, and in any case within three hours after a customs officer has given a direction for the detention of an aircraft, inspect the aircraft, or cause it to be inspected, or give notice to the customs officer that he does not propose to do so ; if the aircraft is liable to be subjected to further measures under these regulations he shall give notice in writing to the commander directing that the aircraft shall be detained for a further period. [10]

### PART III.—AIRCRAFT DEPARTING

11.—(1) The medical officer may examine any person proposing to embark on an aircraft whom he suspects to be suffering from plague, cholera, yellow fever, typhus fever or smallpox, and if, after examination, he is of opinion that the person shows symptoms of any of these diseases he may prohibit his embarkation. He may also prohibit the embarkation of any person who has been in such close relation with persons showing symptoms of any of these diseases as to render him liable to transmit infection.

(2) If severe smallpox (*variola major*) exists in any part of Great Britain the medical officer may prohibit any person coming from such part, who has been in such contact with any person suffering from the disease as to render him liable to transmit infection, from embarking on any aircraft going beyond Great Britain, Ireland, the Channel Islands and the Isle of Man :

Provided that no person shall be so prohibited if he satisfies the medical officer that he has been vaccinated within a period of three years excluding the last twelve days thereof, or that he has had a previous attack of smallpox, or if he show local signs of early reaction attesting an adequate immunity.

#### *Infected localities*

12. Where the Minister has, by notice published in the London Gazette, declared that a locality is infected with plague, cholera or yellow fever, or that typhus fever or smallpox exists therein in an epidemic form, the following provisions shall operate in that locality until the notice is revoked by a subsequent notice published in the London Gazette :—

- (a) The medical officer may, and within three hours after receiving a request from the commander so to do shall, medically examine any person who proposes to embark on or is on board an aircraft ;
- (b) The medical officer, or other authorised officer of the responsible authority may, and on the request of the commander shall, inspect any clothing, bedding or other article of personal use which belongs to or is in use or is intended for use by the commander or a member of the crew or any person who proposes to embark on or is on board an aircraft and which, in the opinion of the medical officer or other authorised officer as aforesaid may have been exposed to infection, and he may

require the disinfection or destruction of any such clothing, bedding or article of personal use ;

- (c) The medical officer, or other officer as aforesaid may require any parts of an aircraft which, in his opinion, may be infected to be cleansed and disinfected to his satisfaction ;
- (d) No person shall take or cause to be taken on board an aircraft any body linen, clothing or bedding or any article whatsoever which, in the opinion of the medical officer, or other officer as aforesaid, is capable of carrying infection, unless that officer is satisfied that it has been efficiently disinfected ;
- (e) If the locality is declared to be infected with plague, the medical officer may, and shall if so required by the Minister, take steps to secure the deratisation of any aircraft on which he has reason to believe that there are rats ;
- (f) If typhus fever is declared to exist in an epidemic form in the locality, the medical officer may require any person who proposes to embark on or is on board an aircraft and who in his opinion is likely to convey infection, and any article on or proposed to be carried on the aircraft likely to convey infection, to be deloused. [11]

#### PART IV.—GENERAL

##### *Appointment and duties of officers and provision of services by local authority*

13. Nothing in this part of these regulations shall affect any power conferred or duty imposed on any person by any other provision in these regulations.

14. For the purposes of these regulations, the responsible authority may, and if so required by the Minister shall,—

- (a) appoint in addition to the medical officer of health one or more duly qualified medical practitioners for the purpose of performing or of assisting the medical officer of health in the exercise of all or any of the functions assigned to the medical officer by these regulations, and give directions from time to time as to which of the said duties are to be or may be performed by any such medical practitioner ;
- (b) appoint for a sanitary aerodrome one or more assistant officers to act under the direction of the medical officer in the execution of these regulations ;
- (c) at or in connection with a customs aerodrome provide or arrange for the provision of—
  - (i) premises and waiting rooms for medical inspections and examinations ;
  - (ii) means of transport ;
  - (iii) premises for the temporary isolation of persons for whom such accommodation is required for the purposes of these regulations ;
  - (iv) hospital accommodation for persons to whom these regulations are applicable ;



- (d) at or in connection with a sanitary aerodrome provide or arrange for the provision of—
  - (i) apparatus or means for the cleaning, disinfection and disinsecting of aircraft, persons and clothing and other articles, and the deratisation of aircraft ;
  - (ii) equipment and facilities for the examination of suspected material in a laboratory ;
- (e) do all such other things as in the opinion of the responsible authority or of the Minister as the case may be, are necessary for the purpose of enabling the provisions of these regulations to be complied with.

*Powers and duties of medical officer*

15.—(1) The medical officer may, and if so required by the responsible authority or by the Minister shall,—

- (a) examine any person arriving by an aircraft who is suffering from infectious disease ;
- (b) examine any person arriving by an aircraft, where there are reasonable grounds for believing or suspecting that infectious disease is or may be present on the aircraft or that persons on board the aircraft have been exposed to infection from infectious disease during the voyage of the aircraft or during a period of three weeks immediately preceding the arrival of the aircraft ;
- (c) detain for the purpose of examination any person whom he is empowered or required under this regulation to examine ;
- (d) take steps with a view to the isolation of any such person if in exceptional circumstances he thinks it necessary, or prohibit him from leaving the aerodrome save upon such specified conditions as appear to the medical officer to be reasonably necessary to prevent the spread of infection ;
- (e) require the commander to take or assist in taking such steps as, in the opinion of the medical officer, are reasonably necessary for preventing the spread of infection by any such person, for the destruction of insects or vermin, and for the removal of conditions on the aircraft likely to convey infection, including conditions the existence of which might facilitate the harbouring of vermin.

(2) At a sanitary aerodrome the medical officer may examine any person arriving by an aircraft who is reasonably believed to be verminous and may cause any such person and the clothing of or other articles belonging to such person to be cleansed and disinfected.

(3) The medical officer shall forthwith communicate to the responsible authority any directions given to him by the Minister under this regulation.

16. The medical officer may cause any person arriving by an aircraft who appears to be suffering from infectious disease other than tuberculosis to be removed to some hospital or other suitable place approved for that purpose by the responsible authority.

17. If an aircraft arrives at a customs aerodrome other than a sanitary aerodrome, and the medical officer considers that such sanitary measures should be applied to the aircraft or the passengers or crew as

can be applied only at a sanitary aerodrome, he may direct that the aircraft shall proceed to a sanitary aerodrome, and he shall give the commander notice in writing of such direction and of the reasons for the direction.

18.—(1) The medical officer shall enter in the journey log-book of an aircraft under the heading "Observations"—

- (i) if the aircraft leaves the aerodrome within a period of fifteen days from the date on which the medical officer becomes aware of the appearance in the United Kingdom of plague, cholera or yellow fever, or of typhus fever or smallpox in an epidemic form, a statement as to such appearance as aforesaid;
- (ii) a statement as to any person embarking on or continuing his voyage in the aircraft who in the view of the medical officer should be placed under surveillance.

(2) The commander shall as soon as practicable enter in the journey log-book under the heading "Observations" a statement of any facts relevant to public health which have arisen on the aircraft in the course of the voyage, and a statement of any sanitary measures prescribed or permitted by the Convention which have been applied to the aircraft before the commencement of or during the course of the voyage. If the commander so requests the medical officer shall verify and certify any entry relating to measures applied by him or at his direction.

19.—(1) In deciding whether and if so what sanitary measures should be applied to an aircraft or the passengers and crews, the medical officer shall take into account any sanitary measures which have been applied at another aerodrome whether in England and Wales or elsewhere, as noted in the journey log-book of the aircraft, and shall not require the application of any sanitary measures if since their previous application no incident has occurred calling for their renewed application and the aircraft's not visited, except for the purpose of refuelling, a locality infected with plague, cholera or yellow fever, or a locality where typhus fever or smallpox is epidemic.

(2) In applying sanitary measures to an aircraft or the passengers or crew, the medical officer shall have regard to the need for detaining the aircraft for as short a time as possible.

20.—(1) The medical officer shall forthwith inform the customs officer of any measures taken with reference to an aircraft or its cargo, stores or equipment, or the passengers or crew, in pursuance of these regulations.

(2) The medical officer when he releases an aircraft from detention shall give notice in writing to the customs officer, to the commander of the aircraft, and to the person in charge of the aerodrome that, so far as control under these regulations is concerned, the aircraft is free to proceed at or after a date and time stated in the notice.

#### *Duties of commander*

21.—(1) The commander of an aircraft shall—

- (a) answer all questions as to the health conditions on board which may be put to him by a customs officer or medical officer, or other authorised officer of the responsible authority, produce to those officers the journey log-book of the air-

craft if they so require, and furnish them with all such information and assistance as they may reasonably require for the purposes of these regulations ;

- (b) notify forthwith the medical officer of any death caused otherwise than by accident or any case or suspected case of infectious disease on the aircraft, and of any circumstances on board which are likely to lead to infection or the spread of infectious disease ; and
- (c) comply with these regulations and any directions or requirements given to or made of him in pursuance of these regulations.

(2) If an infected aircraft or an aircraft coming from a locality infected with plague, cholera or yellow fever, or a locality where typhus fever or smallpox is epidemic lands elsewhere than at a customs aerodrome—

- (a) the commander shall forthwith notify the responsible authority or the customs officer or a police officer. He shall comply with any reasonable directions which any such authority or officer as the case may be may give, and shall, if possible, proceed to a sanitary aerodrome ;
- (b) no cargo shall be unloaded from the aircraft without the permission of the customs officer ;
- (c) before any passenger or member of the crew leaves the vicinity of the aircraft the responsible authority or the customs officer or a police officer may require him to state his name and his intended destination and address. If a person having been required so to state his intended destination and address either is unable to do so or arrives within the succeeding fourteen days at a place other than that which he has so stated, he shall immediately after his arrival forward particulars of his actual place of arrival and his address to the responsible authority of the place in which he left the aircraft ;
- (d) the commander shall take all steps in his power to secure compliance with the provisions of (c) of this paragraph.

*Compliance with directions, etc., of responsible authority and authorised officers*

22.—(1) Every person to whom these regulations apply shall comply with all directions, requirements or conditions given, made or imposed by the responsible authority or the medical officer or other authorised officer of the responsible authority in pursuance of these regulations, and shall furnish all such information as they may reasonably require (including information as to his name, destination and address) and every person who has for the time being the custody or charge of a child or other person who is under disability shall comply with any directions, requirements or conditions so given, made or imposed, and shall furnish all such information as aforesaid in respect of such child or other person.

(2) Every person who is placed under surveillance or isolated in pursuance of these regulations shall give facilities for any medical examination required by the medical officer of any district in which he may be during the period of surveillance or isolation.



*Charges for services*

23.—(1) Where the commander of an aircraft is required by or in pursuance of these regulations to carry out any measures with a view to reducing the danger or preventing the spread of infection, the responsible authority may themselves at the request of the commander, and, if they think fit, at his cost, cause any such requirement to be complied with instead of enforcing the requirement against the commander. When the responsible authority cause any such requirement to be complied with at the cost of the commander they may, if they think fit, require the amount of the charge for the work or a part thereof to be paid to or deposited with them before the work is undertaken.

(2) The amount of the charge for any work so to be undertaken by the responsible authority shall be such reasonable sum as represents the actual or estimated cost to be incurred in undertaking the work excluding any charge or claim in respect of profit, so, however, that it shall not exceed the sum of ten pounds unless notice of the proposed charge has been given to the commander before the work is undertaken.

(3) Where any action (including any measures of disinfection or disinsectisation) has been taken in regard to an aircraft in pursuance of these regulations, the responsible authority or the medical officer shall, on the request of the commander or any other interested person, furnish the commander or such other person free of charge with a statement in writing recording the particulars of any such action and the reasons why the action was taken.

(4) The medical officer shall on the request of any person arriving by an aircraft on which there has been a case of plague, yellow fever, typhus fever or smallpox, or a case presenting clinical signs of cholera, furnish such person free of charge with a statement in writing showing the date of arrival and any sanitary measures to which he or any articles in his possession have been subjected.

*Recovery of fees and charges*

24. Every charge authorised by regulation 23 shall be recoverable by the responsible authority as if it were a sum which the local authority are entitled to recover under section 293 of the Public Health Act, 1936, and that section shall apply accordingly.

25. Subject to the provisions of regulation 23 any expenses incurred by a county council a local authority or a port health authority in the execution of the regulations shall be defrayed in the same manner as the expenses incurred by them in the execution and discharge of their existing powers and duties.

*Saving for mails*

26. Save as is provided in regulation 27 (2) or in Parts A and B of the schedule to these regulations, nothing in these regulations shall render liable to detention, disinfection or destruction any article forming part of any mail conveyed under the authority of the Postmaster-General, or of the postal administration of any other Government, or shall prejudicially affect the receipt on board and delivery in due course at the place of destination of any such mail in accordance with the provisions of the Post Office Acts.

*Saving for aircraft continuing voyage*

27.—(1) If the commander of an aircraft which has landed at an aerodrome or other place in England and Wales which is not its final destination does not desire to submit to any requirements of these regulations which may be applicable and notifies the medical officer of his intention, he shall be at liberty to continue the voyage without such submission :

Provided that if the aircraft has on board a case of yellow fever, or comes from a locality infected with yellow fever, the medical officer may require that it shall be subjected to such of the measures prescribed or permitted by the Convention in relation to that disease as he considers necessary.

(2) Where the commander notifies the medical officer as aforesaid he shall not land goods or disembark passengers except subject to such conditions as the medical officer may impose in conformity with the provisions of article 57 of the Convention.

*Saving for existing orders*

28. Nothing in these regulations shall affect the Air Navigation Orders or the Aliens Order. [12]

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## SCHEDULE

Measures to be carried out in respect of an infected aircraft or an aircraft coming from an infected locality.

### PART A—PLAGUE

#### *I.—Infected aircraft*

1. The aircraft shall be inspected and the passengers and crew shall be medically examined.

2. The sick shall immediately be disembarked and isolated.

3. All other persons shall be placed under surveillance or, in exceptional circumstances, isolated, for a period expiring not later than six days after the date of arrival of the aircraft at the aerodrome.

The following further measures shall be carried out at a sanitary aerodrome :—

4. Bedding which has been used, soiled linen, wearing apparel and other articles which, in the opinion of the medical officer, are infected, shall be cleansed of vermin and, if necessary, disinfected, and merchandise proposed to be discharged may, if it is considered liable to harbour rats or fleas, be subjected to such measures as the medical officer thinks fit.

5. The parts of the aircraft which have been occupied by persons suffering from plague or which the medical officer considers to be infected shall be cleansed of vermin, and, if necessary, disinfected.

6. The medical officer may in exceptional cases require the aircraft to be deratised if there is reason to suspect the presence of rats on board and if the operation was not carried out at the aerodrome of departure.

## II.—*Aircraft coming from an infected locality*

1. The passengers and crew may be medically examined.

2. Any such persons may be placed under surveillance or, in exceptional circumstances, isolated for a period expiring not later than six days after the date on which the aircraft left the infected locality.

The following further measures may be carried out at a sanitary aerodrome :—

3. The medical officer may in exceptional circumstances require the aircraft to be cleansed of vermin and to be deratised if these operations were not carried out at the aerodrome of departure.

4. Merchandise proposed to be discharged from the aircraft may, if the medical officer considers it liable to harbour rats or fleas, be subjected to such measures as he thinks fit.

## PART B—CHOLERA

### I.—*Infected aircraft*

1. The aircraft shall be inspected and the passengers and crew shall be medically examined.

2. The sick shall immediately be disembarked and isolated.

3. All other persons shall be placed under surveillance\*or, in exceptional circumstances, isolated for a period expiring not later than five days after the date of arrival of the aircraft :

Provided that any person who satisfies the medical officer that he has been vaccinated for cholera within the preceding six months, excluding the last six days thereof, shall not be isolated.

4. The medical officer may prohibit the unloading from the aircraft of the following fresh foods, namely, fish, shellfish, fruit and vegetables.

The following further measures shall be carried out at a sanitary aerodrome :—

5. Bedding which has been used, soiled linen, wearing apparel and other articles which, in the opinion of the medical officer, are infected shall be disinfected.

6. The parts of the aircraft which have been occupied by persons infected with cholera or which the medical officer considers to be infected shall be disinfected.

7. If the drinking water stored on board is suspected by the medical officer, it shall be disinfected and if practicable emptied out and replaced, after disinfection of the container, by a supply of wholesome drinking water.

## II.—*Aircraft coming from an infected locality*

1. The passengers and crew may be medically examined.

2. Any such persons may be placed under surveillance or, in exceptional circumstances, isolated for a period expiring not later than five days after the date on which the aircraft left the infected locality :

Provided that any person who satisfies the medical officer that he has been vaccinated for cholera within the preceding six months, excluding the last six days thereof, shall not be isolated.

3. The unloading from the aircraft of the following fresh foods, namely, fish, shellfish, fruit and vegetables may be prohibited.

## PART C—TYPHUS FEVER

I.—*Infected aircraft*

1. The passengers and crew shall be medically examined.
2. The sick shall immediately be disembarked, isolated and deloused.
3. Any other person reasonably suspected to have been exposed to infection may be placed under surveillance or, in exceptional circumstances, isolated for a period expiring not later than twelve days after the date on which he was deloused.

The following further measures shall be carried out at a sanitary aerodrome :—

4. Any person reasonably suspected to be harbouring lice shall be deloused.
5. Bedding which has been used, linen, wearing apparel and any other article which the medical officer considers to be infected shall be disinfected.
6. The parts of the aircraft which have been occupied by persons suffering from typhus fever or which the medical officer considers to be infected shall be disinfected.

II.—*Aircraft coming from an infected locality*

The passengers and crew may be placed under surveillance or, in exceptional circumstances, isolated for a period expiring not later than twelve days after the date on which they left a locality where typhus fever is epidemic.

## PART D—SMALLPOX

I.—*Infected aircraft*

1. The passengers and crew shall be medically examined.
2. The sick shall immediately be disembarked and isolated.
3. Any other person reasonably suspected by the medical officer to have been exposed to infection on board shall be offered vaccination and shall be placed under surveillance or, in exceptional circumstances, isolated for a period expiring not later than fourteen days after the date of arrival of the aircraft :

Provided that a person shall not be placed under surveillance or isolated if after vaccination he shows local signs of early reaction attesting an adequate immunity, or if he satisfies the medical officer that he has been vaccinated within a period of three years, excluding the last twelve days thereof, or that he has had a previous attack of smallpox.

The following further measures shall be carried out at a sanitary aerodrome :—

4. Bedding which has been used, soiled linen, wearing apparel and any other article which the medical officer considers to have been recently infected shall be disinfected.
5. The parts of the aircraft which have been occupied by persons suffering from smallpox or which the medical officer considers to be infected shall be disinfected.

II.—*Aircraft coming from an infected locality*

The passengers and crew, except any persons who satisfy the medical officer that they fall within the proviso to paragraph I. 3 of this part of the schedule, may be placed under surveillance or, in exceptional circumstances,

isolated for a period expiring not later than fourteen days after the date on which they left a locality where smallpox is epidemic.

\* \* \* \* \*

*Notes.* (1)—By section 143 (4) of the Public Health Act, 1936, authorised officers of local authorities and officers of customs and excise have power to enter any premises or aircraft for the purpose of executing, or superintending the execution of, any regulation made under the section.

(2)—By section 143 (5) any person who wilfully neglects or refuses to obey or carry out or obstructs the execution of any regulation made under the section is liable to a fine not exceeding one hundred pounds, and in the case of a continuous offence to a further fine not exceeding fifty pounds for every day during which the offence continues after conviction therefor. [13]

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## PUBLIC HEALTH (AIRCRAFT) REGULATIONS, 1938

*Circular 1677*

*April 22, 1938*

SIR,

### PUBLIC HEALTH (AIRCRAFT) REGULATIONS, 1938

1. I am directed by the Minister of Health to enclose for the information of the Authority a copy of the Public Health (Aircraft) Regulations, 1938, which will come into force on the 1st July, 1938.

### GENERAL

2. These Regulations have been made by the Minister under Section 143 of the Public Health Act, 1936. They are designed to prevent the introduction of infectious diseases into this country through the medium of air-borne traffic, and they resemble in their general scope the Port Sanitary Regulations, 1933, which were made to secure a similar object in regard to water-borne traffic. The Regulations have been made in conformity with the International Sanitary Convention for Aerial Navigation which was signed at The Hague on the 12th April, 1933, and ratified by His Majesty's Government in the United Kingdom on the 15th September, 1934. For this reason the Regulations include provisions relating to sanitary measures to be taken in certain circumstances in regard to outgoing as well as incoming aircraft.

3. The authority responsible for the execution of the Regulations may be a County Council (only as respects an aerodrome maintained by them), a Port Health Authority, or a Local Authority (i.e. the Common Council of the City of London, or the Council of a Metropolitan Borough, Municipal Borough or Urban or Rural District as the case may be). Regulation 2 (3) provides that the Responsible Authority as respects an aerodrome maintained by a Local Authority shall be the maintaining authority; and that otherwise it shall be the Port Health Authority if the aerodrome is situated in a Port Health District, and the Local Authority if the aerodrome is situated elsewhere. Regulation 3 (2) contains provisions to enable functions to be transferred in certain circumstances from one authority to another or to be distributed amongst more than one authority.



4. It is the duty of the Authority responsible for the administration of the Regulations as respects any aerodrome to appoint the staff and provide or arrange for the provision of the premises, apparatus and equipment, etc., necessary for enabling the provisions of the Regulations to be complied with (Regulation 14).

5. The Regulations deal principally with the measures to be taken at a "customs aerodrome," i.e., an aerodrome for the time being approved by the Secretary of State as an aerodrome on which foreign-going aircraft may land or from which they may depart.

### SANITARY AERODROMES

#### *Recognition of Customs Aerodromes as Sanitary Aerodromes*

6. The Regulations empower the Minister, on being satisfied that a customs aerodrome is properly organised and equipped for the purpose, to recognise it as a "sanitary aerodrome" in accordance with the terms of the International Sanitary Convention of 1933. The facilities which are required to be provided in order that an aerodrome may be so recognised are prescribed in Regulation 2 (4). The practical difference between a sanitary aerodrome and any other customs aerodrome is that it is only at the former that provision need be made for carrying out all the sanitary measures prescribed by the Regulations. Arrangements for the medical inspection of persons arriving or departing on foreign-going aircraft will be necessary at all customs aerodromes, and in addition there must be provided for a sanitary aerodrome (i) apparatus or means for the cleansing, disinfection and disinsecting of aircraft, persons and clothing and other articles, and the deratisation of aircraft, and (ii) equipment and facilities for the examination of suspected material in a laboratory. It is also necessary that one or more assistant officers shall be appointed for a sanitary aerodrome. It will probably be found convenient that at every aerodrome at which there is a regular foreign-going air service the sanitary organisation and equipment should be such that it can be recognised by the Minister as a sanitary aerodrome, as otherwise it may be found necessary on occasion to direct an incoming aircraft to proceed to some other aerodrome which has been so recognised in order that appropriate sanitary measures may be applied to the aircraft or the passengers or crew (Regulation 17).

#### *Staff*

7. It will be seen that the Regulations confer and impose certain specific powers and duties on the "Medical Officer" who is defined as "the Medical Officer of Health of a responsible authority or a registered medical practitioner acting under the direction of such an authority, whether in place of or as an assistant to the Medical Officer of Health or otherwise, for the purpose of executing these regulations or any of them" and Regulation 14 (a) empowers the Authority to appoint one or more duly qualified medical practitioners in addition to the Medical Officer of Health for the purpose of performing or of assisting the Medical Officer of Health in the performance of all or any of the duties assigned to the Medical Officer by the Regulations. The Authority should consider, having regard to the circumstances of the aerodrome and the amount of foreign-going traffic, the number of medical and

other officers who will be required for the purposes of the Regulations. It will probably be found that the present amount of traffic at some aerodromes will not necessitate any increase in the number of medical or other officers employed by the Authority, and that by some rearrangement of duties, the work involved in the execution of the Regulations can be carried out by the existing staff.

8. In the case of an aerodrome approved by the Secretary of State for the purposes of the Aliens Order, the Minister will be prepared to consider, in suitable cases, the appointment as Medical Inspector of Aliens of the officer appointed by the Authority as medical officer for the purposes of the Regulations.

9. The Responsible Authority for a sanitary aerodrome is required to appoint in addition to the medical officer at least one assistant officer to act under his direction. It is contemplated that this officer will normally be a Sanitary Inspector. His services will be available for the performance of such duties under the Regulations as do not require medical qualifications, e.g. inspecting aircraft in certain circumstances or carrying out or superintending disinfection, deratisation, etc.

### *Right of Entry*

10. By section 143 (4) of the Public Health Act, 1936, authorised officers of Local Authorities have power to enter any premises or aircraft for the purpose of executing or superintending the execution of the Regulations. In view of the definition of the expression "authorised officer" in section 343 (1) of the Act, any officer, other than the Medical Officer of Health or Sanitary Inspector, who is appointed by the Responsible Authority for the purpose of executing the Regulations should be authorised in writing so to do.

11. The necessity for the appointment of additional authorised officers to assist during periods of exceptionally heavy traffic at the aerodrome, or during the absence of the regular officers on holiday or sick leave should be borne in mind.

### *Premises and Equipment*

12. It is not necessary that all of the premises, equipment and other facilities which are required to be available at a sanitary aerodrome should be provided actually on the site of the aerodrome, though they must be readily accessible thereto. It is important that in all cases there should be on the aerodrome or in the immediate vicinity a place for medical inspection where satisfactory lighting and water supply are available, a room in which persons suffering from infectious disease may be temporarily accommodated pending removal to hospital, and separate lavatories for the two sexes. The extent and character of the accommodation to be provided will depend upon the amount of traffic making use of the aerodrome, and, where such traffic is not extensive, may be of a simple character. It may be possible in some instances for the Responsible Authority to arrange with the authorities of the aerodrome for suitable accommodation to be placed at their disposal.

13. It is contemplated that persons arriving at an aerodrome who are required in pursuance of the Regulations to be removed to hospital will normally be accommodated in the isolation hospital provided under the Local Authority's arrangements for the treatment of infectious



disease, and that it will be necessary only in exceptional circumstances for special hospital accommodation to be provided for the purposes of the Regulations. It will be necessary for the Responsible Authority to make definite arrangements to ensure that an ambulance is readily available when required to convey persons from the aerodrome to the hospital.

14. The Authority will probably be able to arrange that any cleansing of persons and the cleansing or disinfection of articles of bedding, clothing, merchandise, etc., which may be necessary in pursuance of the Regulations shall be carried out at the place or places in the district where such operations are usually carried out, but it will be necessary for arrangements to be made for any sanitary measures which need to be applied to an aircraft to be carried out at the aerodrome.

15. In the case of an aerodrome situated in a Port Health District, it will probably be found that the premises and equipment provided by the Authority for the purposes of their duties in relation to ships can be used for their duties under these Regulations.

#### CUSTOMS AERODROMES OTHER THAN SANITARY AERODROMES

16. The observations in the foregoing paragraphs of this Circular in regard to sanitary aerodromes are applicable generally to other customs aerodromes, except that it is not obligatory for facilities to be available for such sanitary measures as disinfection, deratisation, etc., or for an assistant officer to be appointed.

#### LIST OF INFECTED LOCALITIES

17. For the purpose of assisting the Medical Officers of districts comprising a customs aerodrome in preparing the list of infected localities which they are required to keep in pursuance of Regulation 4, the Minister proposes to extend to all such Medical Officers the issue of the "Weekly Record of Infectious Diseases at Ports, etc., at Home and Abroad" (in a modified form) which has hitherto been sent each week to the Medical Officers of Health of Port Health Districts. The information contained in the "Weekly Record" will form the basis of the list of infected localities, but the Medical Officer should also have regard to any other relevant information of which he may be cognisant.

#### INFECTED AIRCRAFT OR AIRCRAFT COMING FROM AN INFECTED LOCALITY

18. Regulation 7 provides that an infected aircraft or an aircraft coming from an infected locality shall, if yellow fever is the cause of infection, be subjected to such of the measures prescribed or permitted in relation to that disease by the International Sanitary Convention for Aerial Navigation as the Medical Officer considers necessary. As the United Kingdom is a territory where the conditions do not permit of the development of yellow fever, the provisions of Articles 50 and 51 of the Convention are applicable, that is to say, aircraft may land at a sanitary aerodrome and the measures which may be taken on arrival are (1) inspection of the aircraft and cargo to ensure that they do not contain mosquitoes, and, if necessary, disinsectisation; (2) medical inspection of passengers and crew.

19. The measures which may be taken if the cause of infection is plague, cholera, typhus fever or smallpox are prescribed in the Schedule to the Regulations.

#### INFECTED AIRCRAFT LANDING ELSEWHERE THAN AT A CUSTOMS AERODROME

20. The attention of every Local Authority, whether or not its district comprises a customs aerodrome, is drawn to Regulation 21 (2) which relates to an infected aircraft or an aircraft coming from a locality infected with plague, cholera or yellow fever or a locality where typhus fever or smallpox is epidemic which may land elsewhere than at a customs aerodrome. This Regulation is designed primarily to meet the case of forced landings, and it will be observed that the commander is required to notify the Local Authority, the Customs Officer or a police officer, to comply with any reasonable directions which may be given to him by the Authority or officer, and to proceed, if possible, to a sanitary aerodrome. The Regulation does not prescribe the action to be taken by the Authority or officer on receipt of any such notification, as it has not been found practicable to prescribe a course of action which would be appropriate in all the varying conditions in which a forced landing may occur. The Authority or officer should give such reasonable directions as appear to be appropriate in the particular circumstances, having regard to the purposes of the Regulations to prevent the spread of infection, and, whenever possible, the commander of the aircraft should be directed to proceed to a sanitary aerodrome. If the aircraft is unable to proceed to a sanitary aerodrome, advantage should be taken of the power conferred on the Local Authority or officer in paragraph (c) to require passengers and members of the crew to state their names and intended destinations.

#### DETENTION OF AIRCRAFT AND PERSONS THEREIN

21. Regulations 8 to 10 relate to the detention in certain circumstances of an aircraft arriving at an aerodrome from a foreign place and the passengers and crew thereof for the purpose of medical inspection and such sanitary measures as may be necessary.

22. The Customs Officer will normally be the first officer to visit an incoming aircraft, and for this reason he is required by Regulation 8 to direct that an aircraft and the passengers and crew shall be detained if certain conditions obtain which are prescribed in that Regulation, and to report the matter forthwith to the Medical Officer. It will be observed that the Customs Officer is required to detain the aircraft and its occupants, if, *inter alia*, there has been during the voyage a case of illness caused or suspected to be caused by disease of an infectious nature (Regulation 8 (1) (a)).

23. The period during which the Customs Officer is empowered to detain an aircraft is limited to three hours (Regulation 9), and it is, therefore, essential that within that period the Medical Officer should either (1) inspect the aircraft or cause it to be inspected, or (2) notify the Customs Officer that he does not propose to do so. Under Regulation 10 it is obligatory on the Medical Officer to inspect an aircraft or cause it to be inspected if it has come from or called at any foreign locality included in the Medical Officer's list of infected localities and to inspect it if there has been during the voyage a case or suspected

case of cholera, yellow fever, typhus fever, smallpox or plague. In other cases it is within the discretion of the Medical Officer, having regard to all the circumstances, whether the aircraft should be inspected, but if he decides that inspection is unnecessary he should ensure that the Customs Officer is notified accordingly without delay.

24. The Medical Officer may himself direct that an aircraft shall be detained for medical inspection and may deliver a notice to that effect to the Customs Officer who will in turn deliver it to the commander of the aircraft if he visits the aircraft before the Medical Officer (Regulation 8 (4)). The person in charge of the aerodrome must be informed of any detention of an aircraft directed by the Medical Officer.

25. If it appears to the Medical Officer, after the inspection of an aircraft, that the aircraft is liable to be subjected to further measures under the Regulations, he may direct that it shall be detained for the purpose for a further period, giving notice in writing accordingly to the commander of the aircraft (Regulation 10).

26. The Medical Officer is required to give notice in writing to the Customs Officer, the commander of the aircraft and the person in charge of the aerodrome when he releases an aircraft from detention under the Regulations (Regulation 20 (2)).

#### AIRCRAFT DEPARTING

27. The measures to be applied in respect of outgoing air traffic are prescribed in Part III of the Regulations. It will be observed that they relate only to plague, cholera, yellow fever, typhus and smallpox. Regulation 11 empowers the Medical Officer in certain circumstances to prohibit the embarkation of persons liable to transmit infection. Regulation 12 contains certain additional provisions which will come into operation in any locality which has been declared to be infected with plague, cholera or yellow fever or in which typhus fever or smallpox has been declared to exist in an epidemic form, by notice published by the Minister in the London Gazette.

#### CO-OPERATION WITH AIRCRAFT COMMANDERS AND AERODROME AUTHORITIES

28. It is of course desirable to enlist the co-operation of the commander of an aircraft in order to secure the carrying out of any measures necessary under the Regulations in respect of the aircraft or the persons or articles on board it. Regulation 15 (c) authorises the Medical Officer to require the commander to take or assist in taking such steps as, in the opinion of the Medical Officer, are reasonably necessary for preventing the spread of infection by any person arriving by the aircraft; and also such steps as are necessary for the removal of conditions on the aircraft likely to convey infection, including conditions the existence of which might facilitate the harbouring of vermin. Regulation 21 (c) requires the commander to comply with any directions or requirements given to or made of him in pursuance of the Regulations.

29. Where any action (including any measures of disinfection or disinsecting) have been taken in regard to an aircraft under the Regulations, the commander if he so requests is entitled to receive free of charge a statement in writing recording the particulars of any such action and the reasons why the action was taken.

30. Regulations 5, 18 (2), and 21 relate to duties to be carried out by commanders of aircraft.

31. The co-operation of the person in charge of an aerodrome is also necessary to the satisfactory execution of the Regulations and for these reasons the Regulations require that he shall be supplied with copies of the list of infected localities prepared by the Medical Officer and that certain of the notices or directions given under the Regulations shall be communicated to him. Regulation 6 requires him in certain circumstances to notify the Medical Officer and the Customs Officer of cases of illness on incoming aircraft.

#### AVOIDANCE OF DELAY IN ADMINISTRATION OF REGULATIONS

32. In formulating their proposals for carrying out their duties under these Regulations, the Local Authority should bear in mind the importance of making such arrangements as will involve as little delay as possible to aircraft and passengers at the aerodrome.

#### INFORMATION OF PROPOSED ARRANGEMENTS TO BE GIVEN TO MINISTER

33. It is requested that every Local Authority and Port Health Authority which is the Responsible Authority as respects any customs aerodrome will inform the Minister not later than the 31st May, 1938, of the arrangements proposed for carrying out their duties under the Regulations.

34. A copy of this Circular and a copy of the Regulations are being sent to the Medical Officer of Health.

I am, Sir, etc.

\* \* \* \* \*

[14]

### AIR NAVIGATION (LICENSING OF PUBLIC TRANSPORT) ORDER, 1938

*S. R. & O., 1938, No. 613*

At the Court at Buckingham Palace, the 23rd day of June, 1938

PRESENT,

The King's Most Excellent Majesty in Council

Whereas by section five of the Air Navigation Act, 1936, it is enacted as follows :—

“(1) His Majesty may by Order in Council make provision :—

(a) for securing that aircraft shall not be used in the United Kingdom by any person :—

(i) for plying, while carrying passengers or goods for hire or reward, on such journeys or classes of journeys (whether beginning and ending at the same point or at different points) as may be specified in the Order, or



- (ii) for such flying undertaken for the purpose of any trade or business as may be so specified except under the authority of, and in accordance with, a licence granted to the said person by the licensing authority specified in the Order ;
- (b) as to the circumstances in which a licence under the Order may or shall be granted, refused, revoked or suspended, and in particular as to the matters to which the licensing authority specified in the Order is to have regard in deciding whether to grant or refuse such a licence ;
- (c) as to appeals from the licensing authority by persons interested in the grant, refusal, revocation or suspension of any licence under the Order ;
- (d) as to the conditions which may be attached to such a licence (including conditions as to the fares, freight or other charges to be charged by the holder of the licence), and for securing compliance with any conditions so attached ;
- (e) as to the information to be furnished by an applicant for, or the holder of, such a licence to such authorities as may be specified in the Order ;
- (f) for prescribing, subject to the consent of the Treasury, the fees to be paid in respect of the grant of any licence under the Order ;

and such an Order may make different provision as respects different classes of aircraft and different classes of licences.

(2) An Order in Council under this section may, for the purpose of securing compliance with the Order, provide for the imposition of penalties not exceeding, in the case of a first offence against the Order, a fine of twenty pounds or, in the case of a second or subsequent such offence, a fine of fifty pounds or imprisonment for a term of three months."

And whereas by section 35 of the Air Navigation Act, 1936, that Act is to be construed as one with the Air Navigation Act, 1920 :

And whereas by sub-section (4) of section 17 of the Air Navigation Act, 1920, any Order in Council under that Act may authorise the Secretary of State to make regulations for carrying out the purposes of the Order in respect of such matters as may be specified in the Order :

And whereas by sub-section (2) of section 30 of the Air Navigation Act, 1936, an Order in Council made under any of the provisions of that Act may contain such incidental and supplementary provisions as appear to His Majesty in Council to be necessary or expedient for the purposes of the Order :

Now, therefore, His Majesty is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :—

1. An aircraft shall not be used in the United Kingdom by any person for plying, while carrying passengers or goods for hire or reward, on any journey to which this Order applies, except under a licence granted by the Licensing Authority hereinafter specified to that person and in accordance with the provisions thereof.

2.—(1) The journeys to which this Order applies are :—

- (i) All journeys performed by aircraft on which passengers are carried for hire or reward at separate fares, other than journeys which begin and end at the same place and in the

course of which no passenger is landed or embarked at any other place otherwise than at any intermediate stopping place where passengers are disembarked solely for the purpose of rest or refreshment, as incidental to the journey as a whole ; and

- (ii) All journeys performed by aircraft on which goods are carried for hire or reward, other than a journey on which a single consignor has the exclusive right to have his goods carried therein :

Provided that this Order shall only apply to journeys upon which passengers or goods are both embarked and landed within the United Kingdom and to journeys upon which passengers or goods are embarked in the United Kingdom and landed in the Channel Islands or the Isle of Man, or embarked in the Channel Islands or the Isle of Man and landed in the United Kingdom.

(2) For the purposes of this Order passengers shall be deemed to be carried at separate fares where they are carried in an aircraft on any journey in consideration of separate payments made by them, whether to the owner of the aircraft or to any other person, and whether the payments are solely in respect of the journey or not. Provided, however, that passengers shall not be deemed to be carried at separate fares on journeys where the aircraft is specially ordered for a party under arrangements which have not been initiated by any person concerned in the ownership or operation of the aircraft used for the journey or acting as agent for or on behalf of a person so concerned or by any person who derives any profit arising out of the transaction.

(3) For the purposes of this Order the expression "consignor" shall not include a person carrying on the business of a collecting agent or carrier's agent.

3.—(1) The Licensing Authority for the purposes of this Order shall consist of such number of members not being less than three, one of whom shall be a person of legal experience, as the Secretary of State may from time to time determine ; and shall be known as the "Air Transport Licensing Authority".

(2) The members of the Licensing Authority shall be appointed by the Secretary of State, and shall hold office for such term as the Secretary of State shall at the time of making the appointment determine but shall be eligible for re-appointment from time to time on the expiration of their term of office. The Secretary of State shall nominate one of the members to be Chairman.

(3) The Secretary of State may from time to time appoint deputy members to act in the place of members in the case of illness or absence. Such deputy members may be appointed either for a specified period or to act in the place of a specified member during his illness or absence.

(4) The Secretary of State may remove any member or deputy member from his office for inability or misbehaviour.

(5) Where the Secretary of State proposes to appoint a person to be a member or deputy member of the Licensing Authority, he shall, before making the appointment, require that person to declare whether he has any, and if so what, financial interest in any undertaking which provides transport for passengers or goods or which carries on the business of an aerodrome owners, of a manufacturer of aircraft, aero engines or accessories, or of a supplier of aircraft fuel or lubricants. If any member or deputy member of the Licensing Authority acquires any such

financial interest he shall within four weeks after so doing give notice thereof in writing to the Secretary of State specifying the interest so acquired, and the Secretary of State after taking the matter into consideration may, if he thinks fit, declare that the member or deputy member has vacated his office.

(6) The Licensing Authority may, for the purpose of carrying on its business, appoint such officers and servants as in the opinion of the Secretary of State are necessary, save that the Secretary of State shall himself have the right to appoint some person to act as Secretary to the Authority.

4. The Licensing Authority may grant to any person applying therefor a licence to use aircraft for plying on such journeys as may be specified therein.

5. Applications shall be made in the prescribed manner and shall contain the prescribed particulars. An applicant shall furnish to the Licensing Authority such further information as the Licensing Authority may reasonably require for the discharge of their duties in relation to the application.

6. The Licensing Authority shall cause to be published in the prescribed manner such particulars of any applications for licences received by them as may be prescribed.

7. The Council of any county, county borough, municipal corporation, or county district in England or any county town or district council in Scotland and any person providing transport by air for passengers or goods, any owner of an aerodrome, and any public department may in the prescribed manner and within the prescribed time make representations or objections with regard to an application for a licence.

Where the application is for a licence authorising a service between the United Kingdom and the Channel Islands or between the United Kingdom and the Isle of Man, the expression "public department" shall include the appropriate authorities of the Channel Islands or the Isle of Man as the case may be.

8. The Licensing Authority may if they think fit for the purpose of determining applications for licences hold enquiries in public or in private and shall hold an enquiry in public if within the prescribed period after the time for making objection has elapsed, the applicant or any person who has duly made an objection, gives the Licensing Authority notice in writing requiring them to do so. Before holding any such enquiry the Licensing Authority shall give such notice as may be prescribed to the applicant and to any person who has duly made representations or objections with regard to the application, and shall give the applicant and any such person an opportunity of being heard at the enquiry.

9. Where an application is made to the Licensing Authority for a licence to remain in force for a period not exceeding 7 days, and they are satisfied that it is in the public interest that the application should be determined with expedition, they may determine the application and grant a licence accordingly; and the provisions of this Order as to the publication of particulars of applications, the making of objections and representations, and the holding of enquiries at the instance of the applicant or an objector, shall not in that case apply.

10. Nothing in this Order or in Regulations to be made thereunder shall require a disclosure by the applicant to any person other than the



Licensing Authority of information as to the financial resources of the applicant, and any such information received by the Licensing Authority from the applicant shall be treated as confidential.

11. In exercising their discretion to grant or to refuse a licence and their discretion to attach conditions to any licence the Licensing Authority shall have regard to the co-ordination and development of air services generally with the object of ensuring the most effective service to the public while avoiding uneconomical overlapping and generally to the interests of the public, including those of persons requiring or likely to require facilities for air transport, as well as those of persons providing such facilities. In particular the Licensing Authority shall have regard to the following matters :—

- (a) The existence of other air services in the area through which the proposed services are to be operated ;
- (b) The possibilities of air transport in that area ;
- (c) The degree of efficiency and regularity of the air services, if any, already provided in that area, whether by the applicant or by other operators ;
- (d) The period for which such services have been operated by the applicant or by other operators ;
- (e) The extent to which it is probable that the applicant will be able to provide a satisfactory service in respect of continuity, regularity of operation, frequency, punctuality, reasonableness of charges, and general efficiency ;
- (f) The financial resources of the applicant ;
- (g) The type of aircraft proposed to be used on the service ; and the Licensing Authority shall take into consideration any objections or representations duly made in accordance with the provisions of this Order.

12. The Licensing Authority may grant licences to remain in force for such period, not exceeding seven years, as they may in each case determine, commencing on the date on which the licence is expressed to take effect ;

Provided that if on the date of the expiration of a licence, an application to the Licensing Authority is pending for the grant of a new licence in substitution for an existing licence held by the applicant, the licence shall continue in force until the application is granted or refused.

13. The Licensing Authority may if they think fit pending the determination of an application for a licence grant to the applicant a provisional licence which shall remain in force until the application is determined.

14. Where a person has within one month of the date when the provisions of this Order as to applications for licences come into operation duly applied for a licence authorising him to perform such journeys as may be necessary to enable him to continue to operate a service of aircraft for the carriage of passengers or goods for hire or reward, and satisfies the Licensing Authority that he was immediately before that date operating that service the Licensing Authority shall grant to the applicant a provisional licence authorising him to continue to operate that service, and such provisional licence shall remain in force—

- (a) if the application is granted, until the date as from which the licence is expressed to take effect ; or

- (b) if the application is refused, for a period of three months from the date of the decision of the Licensing Authority.

15. The Licensing Authority may attach to a licence such conditions as they may think fit to secure the efficient operation of the service and with respect to all or any of the following matters :—

- (a) the places between which passengers or goods are to be carried ;
- (b) the places at which intermediate landings may or shall be made for the purpose of loading or landing passengers or goods ;
- (c) the observance of a schedule of service from time to time approved by the Licensing Authority ;
- (d) the suitability and capacity of the aircraft to be used ;
- (e) the maximum fares to be charged to passengers in respect of any journey or portion of a journey or stage for which separate fares are charged.

16. It shall be a condition of every licence that the holder of the licence and any person having a financial interest in the business of the holder of the licence shall refrain from stipulating that any other person shall refuse booking facilities to any other holder of a licence granted under this Order or only grant such facilities on onerous terms.

17. It shall be a condition of every licence that the requirements of the Air Navigation Acts, 1920 and 1936, and of any Orders or Regulations made thereunder, and any Controlled Zone procedure for the time being in force shall be complied with at all times during the currency of the licence in connection with all journeys performed under the licence.

18. It shall be a condition of every licence that the wages, salaries, or other remuneration paid by the holder of a licence to all persons employed in connection with the operation of the services authorised by the licence, or paid to persons employed in connection with the operation of aircraft hired by him for the purposes of those services, and the conditions of their employment shall not be less favourable to them than the wages, salaries or other remuneration which would be payable and the conditions which would have to be observed under a contract which complied with the requirements of any Resolution of the House of Commons for the time being in force applicable to contracts with Government Departments. Provided that if complaint is made to the Licensing Authority that the above-mentioned condition is not being observed, the Licensing Authority, if the complaint is not otherwise disposed of, shall request the Ministry of Labour to seek the advice of the Industrial Court, and the Licensing Authority shall be guided by the advice of the Court in deciding whether the above-mentioned condition is satisfied.

19. In any case in which the Licensing Authority refuse to grant a licence, or grant a licence which differs from the licence applied for, or impose conditions to which the applicant objects, the Licensing Authority shall, if required by the applicant to do so, state in writing the reasons for their decision.

20. A licence may be revoked or suspended by the Licensing Authority on the ground that any condition, subject to which the licence was granted, has not been complied with, provided, however, that before revoking or suspending any licence the Licensing Authority shall give the prescribed notice to the holder of the licence specifying the grounds upon which it is proposed to revoke or suspend the licence,

and shall not revoke or suspend the licence unless they are satisfied, after holding a public enquiry if the holder of the licence requests them to do so, that owing to the frequency of the failures on the part of the holder to comply with conditions, or to the failure having been wilful, or to the failure being a failure to comply with the condition attached to every licence by virtue of Article 16 of this Order the licence should be revoked or suspended. In any case where a licence is revoked or suspended the Licensing Authority shall, if required by the holder of the licence to do so, state in writing the reasons for their decision.

21. The Licensing Authority shall cause to be published in the prescribed manner such particulars of their decisions on applications for licences and such particulars of their decisions to revoke or suspend a licence, as may be prescribed.

22. A licence may at any time be surrendered by the holder to the Licensing Authority for cancellation. If during the currency of a licence the holder applies to the Licensing Authority for a new licence in substitution for the current licence, he shall if a new licence is granted surrender the current licence for cancellation on the date as from which the new licence is expressed to take effect.

23. There shall be paid in respect of the grant of any licence under this Order other than a provisional licence or any licence issued under Article 9 of this Order, the fee of £10 for each year or part of a year of the term for which the licence is expressed to remain in force. In respect of the grant of any provisional licence or of any licence granted under Article 9 of this Order there shall be paid the sum of £1. No refund of any fee paid in respect of the grant of a licence shall be made, whether on the surrender of the licence or otherwise save where a licence is surrendered before its normal date of expiry upon the grant of a new licence authorising a service over the same route, in which case there shall be refunded the sum of £10 for each full year of the unexpired period of the licence but the holder shall in addition to the normal fee for the new licence pay the special additional fee of £1.

24.—(1) The holder of a licence shall make a monthly return in writing to the Licensing Authority giving in respect of the month to which the return relates the particulars set out in the Schedule to this Order with regard to all services authorised by the licence, and with regard to all journeys made by aircraft operated by the holder upon which passengers or goods are carried for hire or reward over routes on which services are authorised by the licence in circumstances such that the journeys do not require to be authorised by a licence under this Order.

(2) The return shall be made on a form to be obtained on application to the Air Ministry, and shall be sent to the Licensing Authority not later than two months after the expiration of the month to which the return relates.

25. The licence-holder shall, if and when required by the Postmaster-General, perform all such reasonable services in regard to the conveyance of mails (with or without officers of the Post Office in charge thereof) by the licence-holder's aircraft or any of them as the Postmaster-General shall from time to time require.

The remuneration for any services performed in pursuance of this paragraph shall be such as may be from time to time determined by agreement between the Postmaster-General and the licence-holder.

Any dispute, difference or question which may arise as to the remuneration to be paid to the licence-holder in respect of such services or as to the rights, duties or liabilities of the licence-holder or the Postmaster-General hereunder or otherwise in relation to any of the matters aforesaid shall in default of agreement be referred in England to a single arbitrator in pursuance of the provisions of the Arbitration Acts, 1889 to 1934 or any then subsisting statutory re-enactment or modification thereof or in Scotland to a single arbiter.

26. A licence shall not be capable of being transferred or assigned :

Provided that in the event of the death, incapacity, bankruptcy, sequestration or liquidation of the holder of a licence, or of the appointment of a receiver or manager or trustee in relation to the business of the holder, the person for the time being carrying on that business shall, if within fourteen days application is made to the Licensing Authority for a new licence, be entitled to perform the journeys authorised by the licence subject to the conditions thereof until the application is determined.

27. Nothing in this Order shall be treated as conferring upon the holder or upon any other person any right to the continuance of any benefits arising from the provisions of this Order or from any licence granted thereunder or from any conditions attached to any such licence.

28. The Licensing Authority shall make an annual report to the Secretary of State as to the exercise of their functions during the year, and such report shall be laid before Parliament.

29.—(1) The Secretary of State may make regulations for carrying out the purposes of this Order in respect of the following matters :—

- (a) for prescribing anything that is to be prescribed under this Order ;
- (b) the procedure to be followed in connection with applications and enquiries ;
- (c) the custody, production, and surrender of licences ;
- (d) the keeping of records by the Licensing Authority ; and the furnishing of information by them to the Secretary of State.

(2) In this Order “ prescribed ” means prescribed by Regulations made by the Secretary of State.

30. Any person who uses an aircraft in contravention of this Order, and any person being the holder of a licence who fails to comply with any condition attached to the licence other than the condition as to fair wages and conditions of employment, shall be liable on summary conviction in the case of a first offence to a fine not exceeding twenty pounds, or in the case of a second or subsequent offence, to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months.

31. The Interpretation Act 1889 applies for the purpose of the interpretation of this Order as it applies for the purpose of the interpretation of an Act of Parliament.

32.—(1) This Order may be cited as the Air Navigation (Licensing of Public Transport) Order 1938.

(2) This Order shall come into operation on such day or days as the Secretary of State may by order appoint, and the Secretary of State may fix different days for different purposes and different provisions of this Order. [15]

*M. P. A. Hankey.*

## SCHEDULE

## PARTICULARS TO BE GIVEN BY LICENCE HOLDERS IN MONTHLY RETURNS

I. The names of the places between which the services authorised by the licence are operated within the United Kingdom or between the United Kingdom and the Isle of Man or the Channel Islands.

II. The name of regular stage stopping places en route and of places where stops are made on request.

III. In respect of each stage (distinguishing wherever applicable under each head between journeys on licensed services and other journeys).

- (a) Length of stage in miles.
- (b) Number of paying passengers carried.
- (c) Weight of goods carried.
- (d) Weight of mails carried.
- (e) Total paying load, weight.
- (f) Paying load capacity (weight) on flights commenced.
- (g) Period of month during which services were scheduled during the month.
- (h) Frequency of scheduled services (e.g. once daily each way week days).
- (i) Number of flights scheduled.
- (j) Number of flights commenced.
- (k) Number of flights completed without interruption.
- (l) Number of flights completed after interruption en route.
- (m) Number of flights interrupted en route and not completed.
- (n) Number of flights not commenced :—
  - (i) because no passengers, goods or mails required transport.
  - (ii) because no aircraft was available.
  - (iii) because of weather conditions.
  - (iv) for other reasons which should be stated.
- (o) Number of unpremeditated landings :—
  - (i) for fuel.
  - (ii) on account of weather conditions.
  - (iii) on account of mechanical failure of aircraft or engines.
  - (iv) on account of wireless equipment failure.
  - (v) for other causes.
- (p) Particulars of the type and characteristics of aircraft used (e.g. land-planes or seaplanes); number, power, and makes of engines; maximum total weight authorised; tare weight; and seating capacity.

IV. Number of paying passengers, weight of goods and weight of mails carried during the month,

- (a) on licensed services and
- (b) on other journeys over the same routes.

V. Number of pilots, number of wireless operators, number of navigators and number of other personnel employed on flying duties during the month.



## AIR NAVIGATION (LICENSING OF PUBLIC TRANSPORT) REGULATIONS, 1938

*S. R & O., 1938, No. 1106*

*September 13, 1938*

In pursuance of the powers conferred upon me by the Air Navigation (Licensing of Public Transport) Order, 1938, as authorised by the Air Navigation Acts, 1920 and 1936, and all other powers enabling me in that behalf, I, the Right Honourable Sir Kingsley Wood, M.P., one of His Majesty's principal Secretaries of State, make the following Regulations.

### *Applications for Licences*

1. Every application for a licence shall be made to the Licensing Authority on a form to be obtained from them on demand and shall contain the particulars indicated in Appendix A to these Regulations.

2. Every application for a licence shall be signed by the person applying for the licence and if made by any corporate body or partnership firm shall be signed by a person duly authorised in that behalf by such body, or a partner of the partnership firm as the case may be.

3. Every application for a licence, other than a licence to remain in force for a period not exceeding 7 days, shall be sent to the Licensing Authority so as to reach them on a date not less than 8 weeks and for a licence to remain in force for a period not exceeding 7 days on a date not less than 14 days before the date on which it is desired that the licence shall take effect.

Provided that the Licensing Authority may, in their discretion, accept and deal with any application for a licence received by them after the prescribed date.

4. A copy of every application shall be available for inspection at the office of the Licensing Authority until the application has been determined by the Licensing Authority.

Provided that information contained in the application as to the financial resources of the applicant shall not be available for inspection.

5. The Licensing Authority shall within 14 days of the receipt of an application for a licence, other than an application for a licence to remain in force for a period not exceeding 7 days in respect of which the Licensing Authority are satisfied that it is in the public interest that the application should be determined with expedition, cause to be published in the manner prescribed in Regulation 23 hereof a notice containing the particulars of the application specified in Appendix B to these Regulations and specifying a date not less than 14 days nor more than 21 days after the publication of the notice by which any representations or objections with regard to the application must be made to the Licensing Authority.

6. Every representation or objection with regard to an application for a licence shall be in writing and shall state the specific grounds on which it is based and shall specify any conditions which it may be desired should be attached to the licence if granted. If the representation or objection is made by any corporate body or partnership firm, it shall be

signed by a person duly authorised in that behalf by such body or a partner of the partnership firm as the case may be. A copy of every such representation or objection shall be sent by the person making the same to the applicant for the licence at the same time as it is sent to the Licensing Authority.

7. In cases where the applicant for a licence or any person who has duly made an objection with regard to the application requires the Licensing Authority to hold an enquiry in public for the purpose of determining the application, notice in writing requiring the Licensing Authority to hold such an enquiry shall be sent by the applicant or such person to the Licensing Authority so as to reach them within 7 days after the expiration of the time within which representations or objections must be made under Regulation 5 of these Regulations.

8. In cases where for the purpose of determining an application for a licence an enquiry in public or in private is to be held by the Licensing Authority the notice to be given by the Licensing Authority to the applicant and to any person who has duly made representations or objections with regard to the application shall be not less than 7 days notice in writing and such notice shall specify the place where and the time when the enquiry will be held.

9. The Licensing Authority may at their discretion hear and consider any other representations or objections which may be advanced at any public enquiry at which the application is heard.

#### *Revocation or Suspension of a Licence*

10. The notice to be given by the Licensing Authority to the holder of a licence specifying the grounds upon which it is proposed to revoke or suspend the licence shall be not less than 28 days' notice in writing and any request by the holder of the licence that a public enquiry shall be held shall be sent to the Licensing Authority so as to reach them within 7 days from the date of such notice.

#### *Publication of Decisions*

11. Particulars of the decisions of the Licensing Authority (i) on applications for licences and (ii) to revoke or suspend a licence, as specified in Appendix C and Appendix D respectively to these Regulations shall be published by the Licensing Authority in the manner prescribed in Regulation 23 hereof.

#### *Procedure*

12. Notice that a public enquiry is to be held by the Licensing Authority for the purpose of determining an application for a licence shall be published by the Licensing Authority in the manner prescribed in Regulation 23 hereof not less than 7 days before the date fixed for the holding of the enquiry and such notice shall specify the name and address of the applicant, the nature of the application including the places to be served by the proposed service, the date and manner of publication of the particulars of the application and the place where and the time when the public enquiry is to be held.

13. In cases where it is proposed to revoke or suspend a licence and the holder of the licence requests the Licensing Authority to hold a public enquiry notice that the public enquiry is to be held shall be



published by the Licensing Authority in the manner prescribed in Regulation 23 hereof not less than 7 days before the date fixed for the holding of the enquiry and such notice shall contain such particulars as will enable the licence in question to be identified and shall specify the grounds on which it is proposed to revoke or suspend the licence and the place where and the time when the enquiry is to be held.

A copy of such notice shall be sent by the Licensing Authority to the holder of the licence.

14. On the holding of any public enquiry the Licensing Authority shall after hearing representations or objections with regard to an application for a licence give the applicant an opportunity of replying to such representations or objections but otherwise may determine the order of procedure.

15. The Licensing Authority may adjourn from time to time the consideration of any application. Provided that in cases where notice that a public enquiry is to be held has been published notice of any such adjournment other than an adjournment at the enquiry shall be published in the same manner as the notice that the enquiry was to be held.

#### *Custody, Production and Surrender of Licences*

16. The holder of a licence shall produce it for examination if required to do so by any police constable or by any person duly authorised by the Licensing Authority in that behalf but may elect whether to produce it at an aerodrome used in connection with the journeys authorised by the licence or at his head office or principal place of business.

17. In the event of the holder of a licence ceasing to operate the service authorised thereby he shall forthwith notify the Licensing Authority and return the licence to them for cancellation.

Provided that where owing to the death, incapacity, bankruptcy, sequestration or liquidation of the holder of a licence or to the appointment of a receiver or manager or trustee in relation to the business of the holder he ceases to operate the service authorised by the licence, if the business of the holder is being carried on by some other person, that person shall forthwith notify the Licensing Authority and, unless application has been made within 14 days for a new licence, shall return the licence to them for cancellation.

18. The holder of a licence shall, if he changes his address during the currency of the licence, notify such change to the Licensing Authority within 7 days from the date of such change and shall at the same time send or deliver the licence to the Licensing Authority and they shall thereupon endorse upon the licence his new address and return the licence to the holder forthwith.

19. If a licence ceases to have effect, otherwise than by the effluxion of time, or is suspended or revoked, the holder thereof shall within 5 days after a notice to that effect has been delivered to him personally or sent to him by registered post at the address shown in his application or last notified in accordance with the last preceding regulation send or deliver the licence to the Licensing Authority for retention during the time of suspension or for cancellation as the case may be and the Licensing Authority shall on the removal of a suspension return the licence to the holder.

20. If a licence has been lost, destroyed or defaced the holder thereof shall forthwith notify the Licensing Authority and the Licensing Authority, if satisfied that it has been so lost, destroyed or defaced, shall issue a duplicate, so marked, and the duplicate so issued shall have the same effect as the original licence :

Provided that in the case of a licence that has been defaced the duplicate shall be so issued only after surrender of the original to the Licensing Authority.

*Records to be kept by the Licensing Authority*

21. The Licensing Authority shall keep a record of all applications for licences showing whether the licence was granted or refused and an entry shall be made in the record whenever a licence is revoked or suspended or expires by the effluxion of time.

The record shall contain such particulars as will enable the application to be identified and shall show the terminal places of any journey to which the application relates or which is authorised by a licence and intermediate landing places, the date from which any licence is expressed to operate and the date on which it is expressed to expire.

22. Any police constable and any other person appearing to the Licensing Authority to have a reasonable ground for claiming to do so shall be entitled at any reasonable time to inspect and take copies or extracts from the record.

*Publication*

23. Wherever by these Regulations it is prescribed that the Authority should cause to be published notice, advertisement shall be made in the following manner. An advertisement shall be inserted in a newspaper or newspapers selected by the Licensing Authority best calculated to bring the subject matter of the notice to the attention of persons concerned or likely to be concerned.

The Licensing Authority shall consult from time to time with such associations of local authorities and of owners of aerodromes and of persons providing transport by air for passengers or goods as they may deem expedient and after such consultation shall select a newspaper or newspapers for the insertion of such advertisements.

The Licensing Authority shall in addition to such advertisements give such special or general notices as appear to them expedient.

*Interpretation*

24. In all cases in which any period of time is prescribed by these Regulations, the same shall be reckoned exclusively of the first day and inclusively of the last day, unless the last day shall happen to fall on a Sunday, Christmas Day, or Good Friday, on any day appointed by law to be a bank-holiday, or a day appointed for a public fast or thanksgiving, in which case the time shall be reckoned exclusively of that day also.

25. The Interpretation Act, 1889, applies for the purpose of the interpretation of these Regulations as it applies for the purpose of the interpretation of an Act of Parliament.

26. These Regulations may be cited as the Air Navigation (Licensing of Public Transport) Regulations, 1938, and shall come into force on the 16th day of September, 1938.

## APPENDIX A

*Particulars to be Furnished in Connection with an Application for a Licence.*

Name and Address of Applicant.

Places between which passengers or goods are to be carried.

Places at which intermediate landings are to be made for the purpose of loading or landing passengers or goods.

Times or frequency of the service.

Number and Types of aircraft proposed to be used on the service.

Whether the service is to carry passengers, goods or both.

Maximum fares to be charged to passengers in respect of any journey or portion of a journey for which separate fares are charged.

Date on which the service is to commence.

Period for which the licence is desired.

If the service for which a licence is sought is already in operation by the applicant :—

The period for which the service has been operated.

Number of passengers and weight of goods carried on the service in the past twelve months.

Number and types of aircraft employed on the service during the past twelve months.

Percentage of scheduled journeys commenced but not completed during the past twelve months (1) on account of weather (2) for other causes.

Other services operated by the applicant at the time of the application or immediately prior to that time.

Particulars of working arrangements with other companies.

Particulars of any financial interest which any other person providing passenger transport facilities, or controlling the business of any person who provides such facilities, has in the business of the applicant.

Particulars of any financial interest which the applicant has in any other undertaking providing passenger transport facilities or controlling the business of any person who provides such facilities.

The nature of the person making the application, whether an individual, partnership firm or corporate body, public or private, with or without limited liability. If a company, public or private :—

The nominal and issued capital.

The names of the directors.

The names of any other companies holding shares in the applicant's business.

The names of any subsidiary companies of the applicant.

Such particulars of the accounts of the applicant's business during the last twelve months as the Licensing Authority shall require.

## APPENDIX B

*Particulars of Application to be Published*

Name and Address of applicant.

Places between which passengers or goods are to be carried.

Places at which intermediate landings are to be made for the purpose of loading or landing passengers or goods.

Times or frequency of the service.

Date on which the service is to commence.

Period for which the licence is applied for.

#### APPENDIX C

Name and Address of Applicant.

Name and date of newspaper or newspapers in which notice of the application was published.

Such particulars as will enable the application to be identified.

An indication whether the licence was granted as applied for, granted with modifications (the modifications to be stated) or refused.

#### APPENDIX D

Name and Address of Applicant.

Such information as will enable the licence to be identified including places between which passengers or goods are to be carried.

Places at which intermediate landings are to be made for the purpose of loading or landing passengers or goods.

Date from which revocation or suspension takes effect and, in case of suspension, the period of the suspension.

The grounds on which the licence is revoked or suspended. [18]

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### AIR NAVIGATION (LICENSING OF PUBLIC TRANSPORT) ORDER, 1938 (DATE OF COMMENCEMENT) ORDERS, 1938

These orders are issued under paragraph (2) of Article 32 of the Air Navigation (Licensing of Public Transport) Order, 1938 (hereinafter called "the Order") (p. 36, *ante*).

By Order No. 1 (S. R. & O., 1938, No. 692), dated 19th July, 1938 the provisions of Articles 3, 29, 31 and 32 of the Order shall come into operation for all the purposes thereof on the 19th day of July, 1938.

By Order No. 2 (S. R. & O., 1938, No. 1111), dated 13th September, 1938, the provisions of Articles 2 and 4—28 of the Order shall come into operation for all the purposes thereof on the 16th day of September, 1938.

By Order No. 3 (S. R. & O., 1938, No. 1281), dated 28th October, 1938, the provisions of Articles 1 and 30 of the Order shall come into operation for all the purposes thereof on the 1st day of November, 1938. [19]

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# AGREEMENTS

*See CONTRACT.*

## AIR NAVIGATION AND AIRCRAFT

*See AERODROMES, AIR NAVIGATION AND AIRCRAFT.*

## AIR-RAID PRECAUTIONS

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## ORDERS, CIRCULARS AND MEMORANDA

### AIR-RAID PRECAUTIONS (GENERAL SCHEMES) REGULATIONS, 1938

*S. R. & O., 1938, No. 251*

*March 10, 1938*

In pursuance of the powers conferred on me by the Air-Raid Precautions Act, 1937, I hereby make the following Regulations :—

1. The matters as to which air-raid general precautions schemes shall, in particular, contain provisions shall be the matters specified in the Schedule hereto.

2. These Regulations may be cited as the Air-Raid Precautions (General Schemes) Regulations, 1938, and shall come into force forthwith.

\* \* \* \*

## SCHEDULE

1. The giving of instruction and advice to the public as to air-raid precautions.

2. Arrangements for receiving information with respect to impending air-raids, and for giving air-raid warnings.

3. Arrangements for the collection and necessary distribution of information and reports of air-raid casualties and damage and for the recording of such reports.

4. The organisation of services of air-raid wardens.



5. Arrangements for dealing with casualties, including the organisation of first aid parties, first aid posts, casualty clearing stations and ambulance services.

6. Arrangements for the clearance of debris from highways, streets and public places and for dealing with damaged or unsafe buildings and rescue of persons trapped therein.

7. Arrangements for the detection of poison gas.

8. Arrangements for the decontamination of highways, streets, public places and buildings affected by poison gas and anything therein requiring decontamination.

9. Arrangements for the repair of highways, streets, public places and sewers and for co-ordination between the authorities responsible for such repairs and public utility undertakings.

10. The recruiting and training of such personnel as may be required for the purposes of the scheme.

11. Arrangements for the protection of such premises as it will be essential to occupy and use in time of war for the maintenance of air-raid precautions services.

12. Arrangements for the provision of such shelters for the protection of the public as may be necessary.

13. Arrangements for or in connection with the restriction and regulation of lighting in highways, streets and public places.

14. Arrangements for the distribution of respirators to the public upon directions being given by the Secretary of State in that behalf.

15. The storage and maintenance of equipment, appliances and material required for the purposes of the scheme.

16. Arrangements in connection with any transfer of the civilian population pursuant to any directions given by the Secretary of State.

17. Arrangements for the control and co-ordination in time of war of air-raid general precautions services. [20]

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## AIR-RAID PRECAUTIONS (FIRE SCHEMES) REGULATIONS, 1938

*S. R. & O., 1938, No. 252*

*March 10, 1938*

In pursuance of the powers conferred on me by the Air-Raid Precautions Act, 1937, I hereby make the following Regulations :—

1. The matters as to which air-raid fire precautions schemes in England and Wales shall, in particular, contain provisions shall be the matters specified in the Schedule hereto.

2. These Regulations may be cited as the Air-Raid Precautions (Fire Schemes) Regulations, 1938, and shall come into force forthwith.

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## SCHEDULE

1. The organisation for an emergency fire brigade service, including such provision as is necessary for auxiliary fire stations, fire patrols and fire posts.
2. The selection of auxiliary fire stations.
3. Arrangements for making use of natural and static supplies of water for fire fighting.
4. The storage and maintenance of appliances, equipment and material required for the purposes of the scheme.
5. The recruiting and training of auxiliary firemen and such other personnel as may be required for the purposes of the scheme.
6. Arrangements for securing the use of such vehicles as are required for the purposes of the scheme. [21]

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**AIR-RAID PRECAUTIONS (LONDON) (ALLOCATION OF DUTIES) ORDER, 1938**

*S. R. & O., 1938, No. 253*

*March 21, 1938*

Whereas it is provided by Sub-section (1) of Section two of the Air-Raid Precautions Act 1937 (hereinafter referred to as "the Act") that the Secretary of State shall by order provide for allocating between the London County Council, the common council of the city of London and the councils of metropolitan boroughs, the duty of preparing and submitting air-raid general precautions schemes under Sub-section (2) of Section one of the Act and for determining which of the several matters prescribed by regulations made under the Act are to be provided for in the schemes prepared and submitted by each of those councils respectively and that Section one of the Act shall apply to the administrative county of London subject to such consequential modifications as may be specified in the Order.

Now therefore I the Right Honourable Sir Samuel Hoare, Baronet, one of His Majesty's Principal Secretaries of State, by virtue of the power conferred on me by the said Sub-section do hereby make the following Order :—

1. The duty of preparing and submitting air-raid general precautions schemes under Sub-section (2) of Section one of the Act shall be allocated between the London County Council, the common council of the city of London and the councils of the metropolitan boroughs as follows :—

- (1) It shall be the duty of the common council of the city of London and of the council of each metropolitan borough to prepare and submit to the Secretary of State schemes making provision as to the arrangements to be made in their several areas in respect to the matters specified in the first Schedule hereto (being matters prescribed by Regulations made under the Act) and to such other matters (if any) as may be allocated to them under sub-paragraph 3 of this paragraph and as to the authorities and persons by whom such arrangements are to be carried out ; and



- (2) It shall be the duty of the London County Council to prepare and submit to the Secretary of State schemes making provision as to the arrangements to be made for the administrative county of London in respect to the matters specified in the second schedule hereto (being matters prescribed by Regulations made under the Act) and to such other matters (if any) as may be allocated to them under sub-paragraph 3 of this paragraph and as to the authorities and persons by whom such arrangements are to be carried out.

- (3) If any matter relating to arrangements, other than fire precaution arrangements, for the protection of persons and property from injury or damage in the event of hostile attack from the air which is not specified in either of the Schedules hereto shall arise, the Secretary of State after consultation with the local authorities concerned may allocate that matter either to the London County Council or to the common council of the city of London and the councils of the metropolitan boroughs, or partly to one and partly to the other as he may deem proper.

2. Section one of the Act, in so far as it relates to arrangements other than fire precaution arrangements, shall in its application to the administrative county of London be subject to the following modifications :—

- (1) Sub-section (1) shall apply as though there were inserted after the word "air" where that word last occurs therein the words "in respect to the matters which under paragraph 1 of the Air-Raid Precautions (London) (Allocation of duties) Order 1938 are allocated to each of those authorities respectively."

- (2) Sub-section (2) shall apply as if for the words "the councils of counties and county boroughs" appearing therein there were substituted the words "the London County Council, the common council of the city of London and the councils of the metropolitan boroughs" and as if for the two provisos thereto there were substituted the following proviso :—

Provided that schemes to be submitted by the councils as aforesaid shall be so submitted after such consultation with each other as may appear to them to be necessary or desirable, and it shall be the duty of the respective councils to furnish each other with information reasonably required for the purpose of preparing such schemes and generally to render mutual assistance in their preparation.

- (3) Sub-section (4) shall apply as if after the words "Secretary of State" where those words first occur therein there were added the words "and are by the said Order respectively allocated to the London County Council, or to the common council of the city of London and the councils of the metropolitan boroughs."

- (4) (1) This Order may be cited as the Air-Raid Precautions (London) (Allocation of duties) Order 1938.

- (2) The Interpretation Act, 1889, applies to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

- (3) This Order shall come into force forthwith.

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## FIRST SCHEDULE

1. The giving of instruction and advice to the public as to air-raid precautions.

2. Arrangements for receiving information with respect to impending air raids, and for communicating such information to authorities and persons by whom the arrangements mentioned in any scheme prepared and submitted by the council are to be carried out.

3. Arrangements for the collection and necessary distribution of information and reports of air-raid casualties and damage and for the recording of such reports.

4. The organisation of services of air-raid wardens.

5. The organisation of first-aid parties and first-aid posts for dealing with casualties.

6. Arrangements for the clearance of debris from highways, streets and public places and for dealing with damaged or unsafe buildings and rescue of persons trapped therein.

7. Arrangements for the detection of poison gas.

8. Arrangements for the decontamination of highways, streets, public places and buildings affected by poison gas and anything therein requiring decontamination.

9. Arrangements for the repair of highways, streets, public places and sewers in so far as normally the council is the authority responsible for such repairs and for co-ordination with public utility undertakings for that purpose.

10. The recruiting and training of such personnel as may be required for the purposes of the Scheme.

11. Arrangements for the protection of such premises as it will be essential to occupy and use in time of war for the maintenance of air-raid precautions services included in the Scheme.

12. Arrangements for the provision of such shelters for the protection of the public as may be necessary.

13. Arrangements for or in connection with the restriction and regulation of lighting in highways, streets and public places in so far as the council is normally the authority responsible for such lighting.

14. Arrangements for the distribution of respirators to the public upon directions being given by the Secretary of State in that behalf.

15. The storage and maintenance of equipment, appliances and material required for the purposes of the Scheme.

16. Arrangements in connection with any transfer of the civilian population pursuant to any directions given by the Secretary of State.

17. Arrangements for the control and co-ordination in time of war of the air-raid general precautions services included in the Scheme.

## SECOND SCHEDULE

1. Arrangements for receiving information with respect to impending air raids.

2. The organisation of casualty clearing stations and ambulance services for dealing with casualties.

3. Arrangements for the repair of highways, streets, public places and sewers in so far as normally the council is the authority responsible for such repair and for co-ordination with public utility undertakings for that purpose,

recruiting and training of such personnel as may be required for the purposes of the Scheme.

4. Arrangements for the protection of such premises as it will be essential to occupy and use in time of war for the maintenance of the air-raid precautions services under the control of the council.

5. Arrangements for or in connection with the restriction and regulation of lighting in highways, streets and public places in so far as the council is normally the authority responsible for such lighting.

6. The storage and maintenance of equipment, appliances and material required for the purposes of the Scheme.

7. Arrangements in connection with any transfer of the civilian population pursuant to any directions given by the Secretary of State.

8. Arrangements for the control and co-ordination in time of war of the air-raid general precautions services included in the Scheme. [22]

## AIR-RAID PRECAUTIONS (APPROVAL OF EXPENDITURE) PROVISIONAL REGULATIONS, 1938

*July 18, 1938*

In pursuance of the powers conferred on me by section 11 (1) of the Air-Raid Precautions Act, 1937, I hereby make the following regulations:—

1.—(1) These regulations may be cited as the Air-Raid Precautions (Approval of Expenditure) Provisional Regulations, 1938, and shall come into force on the date hereof.

(2) These regulations shall not extend to Scotland.

2.—(1) In these regulations, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them—

“the Act” means the Air-Raid Precautions Act, 1937;

“air-raid precautions arrangements” means arrangements made in pursuance of a scheme approved by the Secretary of State under the Act or, with the concurrence of the Secretary of State, otherwise than in pursuance of such a scheme for the protection of persons and property from injury or damage in the event of hostile attack from the air, and “air-raid precautions services” means services in connection with such arrangements;

“appropriate loan charges”, in relation to any item of capital expenditure, means the amount which would be payable by a local authority in any year by way of loan charges in respect of moneys borrowed for that purpose, on the assumption that the money had been so borrowed—

(a) on terms that it was repayable by equal annual instalments of principal and interest combined over such period as the Secretary of State, after consultation with the Minister of Health, may consider appropriate; and

(b) at a rate of interest which (unless the Secretary of State otherwise determines) shall, in a case where the expenditure was defrayed out of borrowed money, be the rate at which the money was so borrowed or the rate which

at the time the expenditure was incurred was the rate for the time being fixed by the Treasury under section one of the Public Works Loans Act, 1897, in respect of loans to local authorities advanced out of the Local Loans Fund for expenditure of a similar character, whichever is the less, and in a case where the expenditure was defrayed out of revenue the rate so fixed by the Treasury as aforesaid ;

“district auditor” includes any person appointed by the Minister of Health to perform the functions of a district auditor ;

“financial year” means the period of twelve months ending on the thirty-first day of March ;

“prescribed” means prescribed by these regulations and “prescribed form” means the appropriate one of the forms set out in the schedule to these regulations or such other form substantially to the like effect as the Secretary of State may from time to time approve.

(2) The Interpretation Act, 1889, shall apply to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

3. Subject to the provisions of these regulations, expenditure incurred for the purposes of air-raid precautions arrangements shall only be approved for the purposes of the Act in so far as it represents expenditure incurred specifically for the purposes of air-raid precautions arrangements and does not include any expenditure which would have had to be incurred had no air-raid precautions arrangements been made ; and, in particular, in so far as such expenditure represents—

(a) expenditure on salaries, wages or other remuneration of officers, servants or employees of a local authority or of members of a police force it shall only be approved in so far as

(i) such persons were appointed to the service of the authority or to a police force for the purpose of and are wholly employed on air-raid precautions services ; or

(ii) such expenditure represents additional cost incurred by reason of the fact that some person originally appointed to the service of the local authority or to a police force for other purposes is employed on air-raid precautions services ; or

(iii) such expenditure represents additional remuneration which has been paid to any such person in respect of additional duties performed by that person in connection with air-raid precautions arrangements ; or

(iv) such expenditure represents the appropriate proportion of the remuneration of a person appointed to the service of the local authority or to a police force, for the purposes of air-raid precautions services who is partly employed on other duties :

(b) expenditure in the nature of loan charges, rent and other like payments in respect of any property used or appropriated (whether in whole or in part) for air-raid precautions arrangements, it shall only be approved in so far as it represents expenditure which would not have been incurred if that property had not been so appropriated or used.

4. No expenditure representing expenditure incurred for the purpose of protecting from injury or damage in the event of hostile attack from the air, persons employed in or property belonging to or appropriated for the use of any water, gas, electricity, transport, harbour or dock undertaking, whether carried on by a local authority or not, or for the purpose of ensuring the continued functioning of the undertaking in time of war, shall be approved for the purposes of the Act.

5. Expenditure which has been incurred at any time after the 31st day of December, 1936, for the purpose of making provision for the protection of persons and property from injury or damage in the event of hostile attack from the air, may be approved notwithstanding that the prior concurrence of the Secretary of State was not obtained to the making of such provision, if and in so far as the Secretary of State is satisfied that such provision was in all the circumstances reasonable and proper.

6. The approval by the Secretary of State of an air-raid precautions scheme or his concurrence in proposals for the purpose of making provision, otherwise than in pursuance of such a scheme, for the protection of persons and property from injury or damage in the event of hostile attack from the air, shall not be treated as implying the approval by the Secretary of State of the expenditure of any particular sum on any matter included in or connected with such scheme or proposals.

7. If the Secretary of State shall have notified any authority by which any air-raid precautions scheme or proposals for making, otherwise than in pursuance of such a scheme, provision for the protection of persons and property against injury or damage in the event of hostile attack from the air has or have been submitted, that either generally in relation to the scheme or proposals or with respect to any particular matter therein—

- (a) he requires it to submit for his concurrence particulars of the numbers of persons to be employed in connection therewith and of the remuneration proposed to be paid to such persons, or estimates, plans, specifications, or other particulars ; or
- (b) he requires it to comply with certain specified conditions in connection with such expenditure ; or
- (c) for the purposes of the Act he is not prepared to approve expenditure of a particular character or beyond a specified amount ;

then the Secretary of State may, for the purposes of determining the amount of expenditure thereon to be regarded as approved expenditure under the Act, disregard any expenditure which has been incurred otherwise than in accordance with particulars, estimates, plans or specifications, concurred in by him or which has been incurred otherwise than in compliance with any conditions so notified or which is so excluded or which is in excess of the amount so specified.

8. Where, after consultation with such associations of local authorities as appear to the Secretary of State to be concerned and with any local authority with whom consultation appears to him to be desirable, the Secretary of State either generally or in the case of a particular local authority or class of local authorities so directs, expenditure on any particular matter may for the purpose of being approved under the Act be calculated on the basis of an annual sum of a specified amount or of a capitation rate or on some other specified basis.



9. In estimating the amount of expenditure incurred by a council for the purpose of air-raid precautions arrangements for the purpose of its being approved under the Act—

- (1) Expenditure of a capital nature, whether defrayed out of borrowed moneys or out of revenue, shall, unless by reason of the relative smallness in the circumstances of the amount involved the Secretary of State otherwise determines, be estimated on the basis of the appropriate loan charges:

Provided that—

- (a) before deciding that any particular item of expenditure defrayed out of revenue is of a capital nature the Secretary of State shall consult the Minister of Health; and
  - (b) in the event of any property concerned being no longer available for purposes of air-raid precautions arrangements the Secretary of State may make such adjustments as appear to him to be fair and reasonable in the circumstances.
- (2) Sums required by a local authority other than a council to be paid by the council in respect of expenditure incurred by that local authority for the purpose of making provision for the protection of persons and property from injury or damage in the event of hostile attack from the air, shall only be taken into account if and in so far as such expenditure is approved by the Secretary of State.
- (3) Where an arrangement exists for the exercise by one council of functions connected with air-raid precautions arrangements as the agents of another council, the Secretary of State, in estimating the expenditure incurred by each of the councils concerned in any such arrangement, shall make such adjustments as appear to him to be necessary for the purpose of arriving at a true estimate of the expenditure incurred by each council respectively.

10. For the purpose of obtaining the approval of the Secretary of State to expenditure incurred for the purpose of air-raid precautions arrangements a local authority shall :

- (a) as soon as may be after the end of each financial year submit to the Secretary of State a statement on the prescribed form of the expenditure incurred in that financial year duly certified by the chief officer or other person charged with the duty of keeping its accounts, together with such further documents and information in regard thereto as are prescribed or as the Secretary of State may in a particular case require, and
- (b) give facilities for the examination by a district auditor of such statements and of any books, records, documents and accounts of the authority relating thereto :

Provided that a statement submitted in respect of the financial year ending on the 31st March, 1938, shall include and shall show separately any expenditure incurred after the 31st day of December, 1936, and before the 1st April, 1937.



11.—(1) The Secretary of State shall in accordance with the foregoing regulations and by reference to any statement submitted in accordance with these regulations and to such other information as may appear to him to be relevant, estimate the amount of expenditure incurred by a council (including the due proportion of any sum required by a local authority other than the council to be paid by the council in respect of approved expenditure incurred by that authority) for the purpose of being approved under the Act and shall also, so far as may be necessary for this purpose, decide how much of any expenditure referred to in any statement submitted by a local authority other than a council is to be regarded as approved expenditure : provided that for these purposes the Secretary of State may make such deductions or adjustments as appear to him to be fair and reasonable in respect of the use for purposes other than air-raid precautions services of any property provided or appropriated for the purpose of air-raid precautions arrangements or in respect of the services of any person employed on air-raid precautions services or in respect of any revenue receipts derived from the selling, letting or hiring of such property or services or in respect of any item of expenditure which is in his opinion excessive or unreasonable.

(2) The amount of expenditure incurred by the council so estimated as aforesaid shall be the approved expenditure of the council for the purposes of section 8 of the Act in respect of the period to which the statement submitted by that council relates.

12. Any question which may arise under these regulations as to the inclusion or exclusion of any item of expenditure or receipt or as to the manner in which any such item is to be estimated or as to the amount to be approved hereunder shall be decided by the Secretary of State and his decision shall be final.

In pursuance of Section 2 of the Rules Publication Act, 1893, I hereby certify that on account of urgency these regulations should come into immediate operation and I make them to come into operation forthwith as Provisional Regulations.

\* \* \* \* \*



[illegible]

**PART II.**—*Particulars relating to items of capital expenditure included in Part I of Statement*

**A.—Items of capital expenditure met out of loan**

Address and brief description of purpose of premises.	Nature of expenditure ( <i>e.g.</i> purchase, adaptation, etc.)	Number of each item in Part I under which any capital expenditure on the premises shown in Col. 1 is included.	No. and date of Home Office letter authorising expenditure.	Amount of expenditure included against each item in Part I.	State in what other financial years, if any, capital expenditure on this work or service has been or is being incurred.	Particulars of any loan raised to meet expenditure. (State amount of loan, whether a specific loan was raised or whether the amount was met from consolidated loan fund, etc., loan period, rate of interest and method of repayment.)
1.	2.	3.	4.	5.	6.	7.
				£		
Total ...	—	—	—	—	—	—

**B.—Items of capital expenditure met from revenue.**

Address and brief description of purpose of premises.	Nature of expenditure, (e.g. purchase, adaptation, etc.)	Number of each item in Part I under which any capital expenditure on the premises shown in Col. 1 is included.	Number and date of Home Office letter authorising expenditure.	Amount of expenditure included against each item in Part I.	State in what other financial years, if any, capital expenditure on this work or service has been or is being incurred.
1.	2.	3.	4.	5.	6.
				£	
Total ...	—	—	—		—

**\*PART III (a).—Expenditure (included in Part I of Statement) dealt with as expenditure for Special County Purposes**

No. of Item in Part I. 1.	Expenditure of a capital nature. 2.	Expenditure of a non-capital nature. 3.	Area on which chargeable. 4.
	£	£	
Totals ...			—

\* This portion of the Statement should be completed only by County Councils.

**PART III (b).—Expenditure (included in Part I) chargeable on areas outside the area of the Council**

No. of Item in Part I. 1.	Brief description of service. 2.	Expenditure of a capital nature. 3.	Expenditure of a non-capital nature. 4.	Authority to whom charge- able. 5.
		£	£	
Totals ...	—			—

**PART III (c).—Payments (included in Part I) to other authorities in respect of air-raid precautions expenditure incurred by those authorities**

No. of Item in Part I. 1.	Brief description of service. 2.	Expenditure of a capital nature. 3.	Expenditure of a non-capital nature. 4.	Authority to whom payment has been made. 5.
		£	£	
Totals ...	—			—

*Certificate of Chief Financial Officer*

(1) I certify that the particulars set forth in the foregoing Statement are correct and that the amounts entered in Part I of the Statement properly represent expenditure which has been incurred specifically for the purposes of air-raid general precautions.

(2) I further certify

\*(a) that the attached supplementary statement is a correct and comprehensive statement of all receipts and credits relating to the period covered by the Statement ;

or

\*(b) that there were no receipts or credits relating to the period covered by the Statement.

(8) I further certify that the amount included in the foregoing Statement in respect of the remuneration (including the usual addition for uniforms and pensions, etc.) of police officers wholly employed on Air Raid General Precaution Services is £.....

Dated this.....day of.....193.....

Signature.....

Chief Financial Officer

to the.....Council.

Official Address .....

\* Delete whichever is inapplicable. ....

*Certificate of the Clerk to the Local Authority*

I certify that any property in respect of which grant has been paid under the Air-Raid Precautions Act, 1937, or in respect of which expenditure is included in the foregoing Statement was as at 31st March.....still in possession of the Local Authority and was at that date available for purposes of air-raid precautions in accordance with any scheme or proposals approved or concurred in by the Secretary of State, and has not been appropriated or used for any other purpose † (except as shown in the attached memorandum).

Dated this.....day of.....193.....

Signature.....

Clerk to the Local Authority.

*Certificate of District Auditor*

I have examined the entries in the foregoing Statement († and in the supplementary statement attached thereto), and I hereby certify (‡ subject to the observations contained in the attached report dated.....) that to the best of my knowledge and belief the particulars entered therein are correct.

Dated this.....day of.....193.....

Signature.....

District Auditor.

† Delete if no supplementary statement or memorandum has been rendered.

‡ Delete if no report falls to be made.



## SCHEDULE B

## AIR-RAID PRECAUTIONS ACT, 1937

Statement by the.....Council showing the amount of expenditure incurred specifically for the purposes of Air-Raid Fire Precautions during the financial year ending 31st March.....

PART I.—*Summary Statement*

Home Office letter authorising or concurring in expenditure.		Item.	Service.	Expenditure of a capital nature whether met out of loan or otherwise.	Expenditure of a non-capital nature excluding loan charges.	Expenditure included in Cols. 5 and 6 in respect of proposals which have not been concurred in by the Secretary of State.	
No.	Date.					Expenditure of a capital nature, whether met out of loan or otherwise.	Expenditure of a non-capital nature excluding loan charges.
1.	2.	3.	4.	5.	6.	7.	8.
		1	<i>Administration and Staff (in so far as not included under other items).</i>	£	£	£	£
			.....				
			.....				
		2	<i>Accommodation.</i>				
			.....				
			.....				
		3	<i>Recruitment, equipment and training of emergency personnel.</i>				
			.....				
			.....				
		4	<i>Emergency appliances and equipment (in so far as not included under other items).</i>				
			.....				
			.....				
		5	<i>Vehicles.</i>				
			.....				
			.....				
		6	<i>Water supplies.</i>				
			.....				
			.....				
		7	<i>Other expenses.</i>				
			.....				
			.....				
			Totals ...				



**PART III (a).—Expenditure (included in Part I) chargeable on areas outside the area of the Council**

No. of Item in Part I. 1.	Brief description of service. 2.	Expenditure of a capital nature. 3.	Expenditure of a non-capital nature. 4.	Authority to whom chargeable. 5.
		£	£	
Totals ...	—			—

**PART III (b).—Payments (included in Part I) to other authorities in respect of air-raid precautions expenditure incurred by those authorities**

No. of Item in Part I. 1.	Brief description of service. 2.	Expenditure of a capital nature. 3.	Expenditure of a non-capital nature. 4.	Authority to whom payment has been made. 5.
		£	£	
Totals ...	—			—

*Certificate of Chief Financial Officer*

(1) I certify that the particulars set forth in the foregoing Statement are correct and that the amounts entered in Part I of the Statement properly represent expenditure which has been incurred specifically for the purposes of air-raid fire precautions.

(2) I further certify

\**(a)* that the attached supplementary statement is a correct and comprehensive statement of all receipts and credits relating to the period covered by the Statement ;

or

\**(b)* that there were no receipts or credits relating to the period covered by the Statement.

(3) I further certify that the amount included in the foregoing Statement in respect of the remuneration (including the usual addition for uniforms and pensions, etc.) of police officers wholly employed on Air Raid Fire Precautions Services is £.....

Dated this.....day of.....193.....

Signature.....

Chief Financial Officer

to the.....Council.

Official Address.....

*Certificate of the Clerk to the Local Authority*

I certify that any property in respect of which grant has been paid under the Air-Raid Precautions Act, 1937, or in respect of which expenditure is included in the foregoing Statement was as at 31st March.....still in possession of the Local Authority and was at that date available for purposes of air-raid precautions in accordance with any scheme or proposals approved or concurred in by the Secretary of State and has not been appropriated or used for any other purpose \* (except as shown in the attached memorandum).

Dated this.....day of.....193.....

Signature.....

Clerk to the Local Authority.

*Certificate of District Auditor*

I have examined the entries in the foregoing Statement (\* and in the supplementary statement attached thereto), and I hereby certify (‡ subject to the observations contained in the attached report dated.....) that to the best of my knowledge and belief the particulars entered therein are correct.

Dated this.....day of.....193.....

Signature.....

District Auditor.

[24]

\* Delete if no supplementary statement or memorandum has been rendered.

‡ Delete if no report falls to be made.

## GOVERNMENT EVACUATION SCHEME CIRCULAR 1759

*(England and Wales)*

*January 5, 1939*

SIR,

1. I am directed by the Minister of Health to communicate with the Local Authority on the question of the evacuation of the civilian population in the event of an emergency. The Government have decided that, as long as there is a risk that the civilian population may become involved in attack from the air, arrangements must be planned for such measures of orderly evacuation from the crowded areas of large towns as circumstances may require.

2. There are necessary limitations on such action. Duty will require the great majority of people to remain where they are, and the national interest will be best served by the avoidance of an indiscriminate movement of large numbers of people from one part of the country to another. The objective must be to secure, by a policy of evacuation carefully planned in advance, the removal from the more dangerous to the less dangerous areas of those whose transfer is most desirable in the national interest and on humanitarian grounds. The survey of accommodation which is a necessary preliminary step must of course cover all accommodation which can be used for this purpose. The Government have

no doubts, however, that in working out these plans children must rank first in order of priority, and they have accordingly decided in the first instance to elaborate and perfect the emergency plans prepared in September last for the removal of children from a number of the most congested areas, in which the results of air attack would be most serious.

3. It is an essential part of these plans that advance arrangements should be made for the reception and care of children in the districts to which they would be transferred. The scale on which such provision would be required for children alone is very considerable: to take the case of those areas in and around the Administrative County of London alone, the number of children of all ages is approximately one million.

4. The use of empty houses, other buildings, or camps will provide opportunities, and account will be taken of all suitable resources in the working out of the plans. But the Government are satisfied that the main prospective source of supply of suitable homes adequate to the needs of the situation can only be found in the use of existing occupied houses.

5. The Government look with confidence for general support in attaining an object the necessity of which none will deny, the removal of unprotected children from the acute dangers of air attack in crowded cities in certain areas. They hope that the results of the inquiries about to be made will be such as to render it unnecessary for them to exercise in connection with the housing of children the general compulsory powers in relation to available accommodation which must needs be at their disposal in time of war.

6. They recognise that if this support is to be forthcoming in full measure, very detailed arrangements will be necessary. They must seek to reduce to a minimum such inconvenience to those who receive the children so transferred as must inevitably be involved in a scheme of this magnitude, and to secure so far as practicable that the burden of this national duty is fairly distributed.

7. The first essential measure is, as already stated, to compile an accurate record of all available housing accommodation. This would take account not only of the amount of accommodation but of its suitability, and of the circumstances of individual householders. In their plans the Government are concentrating in the first place on finding accommodation in suitable homes for children whether they are school children, who come in school units accompanied by their teachers, or younger children, who come with their mothers or some other person, and for whom special arrangements at present under consideration will require to be made.

8. It is proposed, therefore, to undertake a survey of such accommodation with a view to ascertaining—

- (a) the amount of surplus accommodation on the standard of one person per habitable room;
- (b) the amount of this surplus to be found in houses which are suitable for reception;
- (c) the amount to be found in houses where the householder is willing to receive unaccompanied children or teachers.

9. The survey will also provide an opportunity for ascertaining and considering the amount and suitability of supplementary provision which can be made in other ways.



10. The Minister believes that this is a matter which can only be effectively carried out through the machinery of local government, and he has been glad to learn from the discussion which he has had with representatives of the associations of local authorities and teachers that he can rely on their cordial co-operation.

11. The Minister requests that the authority will take steps to put this survey in hand without delay, and he knows that all authorities can be relied upon to appreciate the importance of carrying it out with expedition and with tact. It will be necessary to appoint a number of visitors to act under the direction of a chief officer to conduct the survey. The selection of visitors is a matter for the authority, but it appears to the Minister that the best results are likely to be attained by a judicious combination of skilled official personnel and of voluntary effort. Expenditure properly incurred in carrying out the survey will not be a charge on the local rates, though it is not contemplated that local authorities will in general find it necessary to engage additional staff for the purpose. The Minister is glad to learn that the local education authorities (to whom a copy of this circular has been sent) and the teachers' organisations will be ready to co-operate in this work. The authority will often wish to supplement the assistance so given by availing themselves of the offers of assistance by the Women's Voluntary Services and other voluntary organisations.

12. The General Inspectors of the Ministry will be glad to give any advice or assistance in their power on any matters which may arise in the making of the survey.

13. In the working out of arrangements to secure proper co-ordination between evacuation and reception over wide areas, it will be necessary to deal with this problem on a regional basis, though it is desired to retain the greatest possible measure of decentralisation in the actual administration. To facilitate the desired co-ordination I am to request that a copy of the completed return (Form Ev. 4) may be sent to the County Council, to whom a copy of this circular has been sent.\*

14. The need for securing the continued education of the children under the best conditions that local circumstances permit is a matter to which the Government attach great importance, and the Board of Education will in due course address a circular to local education authorities covering the various educational, financial, and administrative questions to which the scheme for the evacuation of school children will give rise.

15. While the present circular has not been addressed to areas which are obviously unsuitable for reception, the receipt of the circular and the conduct of the survey in a district need not be taken to imply that the whole or part of the area will ultimately be designated as a suitable receiving area. It will be appreciated, however, that a main purpose of the evacuation plan is the dispersal of the evacuated population over an area as wide as possible, and in view of the number of children living in the large cities it is anticipated that it will be necessary to utilise for reception the whole, or at any rate the greater part, of those areas where this objective of dispersal can be attained. The Government will await the receipt of the full returns before finally deciding upon the extent to which individual areas should be used as reception areas.

\* Not appropriate to County Boroughs.



## 16. Enclosed with this Circular are—

- (a) An outline of the Government Scheme for the information of householders. Form Ev. 1.
- (b) A memorandum for guidance in the conduct of the survey. Memo. Ev. 1.
- (c) A record sheet showing the information to be obtained by visitors. Form Ev. 2.
- (d) A specimen sheet for the local authority's register of accommodation. Form Ev. 3.
- (e) A summary form for use by the local authority in submitting their return to the Minister and the county council. Form Ev. 4.
- (f) A form of authorisation for visitors. Form Ev. 5.

Additional copies of this circular and enclosures are forwarded for the use of the Financial Officer and the Officer in charge of the survey.

17. The Minister will be glad to receive a return on the enclosed form (Form Ev. 4) not later than 28th February, 1939. [25]

\* \* \* \* \*

## GOVERNMENT EVACUATION SCHEME MEMO. EV. 1

### *Enclosure to Circular 1759*

#### MEMORANDUM FOR THE GUIDANCE OF LOCAL AUTHORITIES IN THE CONDUCT OF THE SURVEY OF HOUSING ACCOMMODATION

1. The first object to be attained is a knowledge of the amount of surplus accommodation in occupied dwelling-houses in the district. It is desired to maintain proper housing standards, and for the purpose of this survey a standard of one person per habitable room is being taken.

2. The survey will be a comprehensive one but in working out the plans for evacuation priority is being given to children and it is obviously desirable that so far as possible children should be accommodated in homes where their presence would be willingly accepted. While it will be understood that there will be no right, in face of objection, to enter houses for the purpose of obtaining information, the visitor will no doubt do what is possible to satisfy himself that the home is suitable for children. Any individual cases where preliminary difficulties cannot be overcome by the discretion and tact of the visitor should be reserved for further consideration.

Local authorities will probably wish to consider whether the work of the visitors might not be facilitated by the issue to every householder, shortly before visitors commence work, of a printed letter appealing for co-operation and signed by the Chairman of the Council or the Mayor, as the case may be. Experience obtained in September last indicates the value of this form of personal approach by the local authority. The terms of any such letter would of course be a matter for determination locally.

Additional methods of mobilising goodwill may occur to individual local authorities, e.g., through the educational organisation, clergy of all denominations, women's societies and other organisations.

3. In the first place, a responsible officer to exercise a general direction over the conduct of the survey should be selected. The number of visitors required for the survey should then be estimated, the district being divided into areas within the capacity of a single visitor. The civil parish may often be found a convenient sub-unit for this purpose in rural districts. Consideration of the authority's own resources and consultation with the local education authority, teachers, and voluntary organisations should enable the local authority to ascertain the number and quality of visitors available.

4. The selection of visitors should be carefully made, and special regard should be paid to their capacity for dealing in a kindly and tactful way with the householders on whom they will call. Local authorities (including local education authorities) have resources of personnel and can often enlist the assistance of persons well accustomed to this kind of work, e.g., health visitors, housing officers, teachers, school attendance officers and sanitary inspectors. The nucleus thus obtainable can, where desired by the local authority, be supplemented by volunteers, and by the resources which are co-ordinated in the Women's Voluntary Services. Further particulars as to voluntary assistance can be supplied by the Ministry if desired.

5. The officer in charge of the survey should at once take steps to instruct those selected in the conduct of their duties, and he will no doubt think it desirable to hold meetings of visitors to discuss methods of approach before they commence their round of visits. For this purpose it will be desirable to prepare instructions and advice for the benefit of visitors: some suggestions to this end will be the subject of a separate communication.

Each visitor should be provided with a form of authorisation to produce to householders: a copy of a model which it is suggested should be used for this purpose is enclosed with this memorandum.

Each visitor should also be provided with a record book for the purpose of making his report, and with a few loose sheets to enable him to deal with houses which though occupied may not yet have appeared in the rate book. As these reports will require to be substantially in the same form, books have been printed centrally in order to save time, and a supply is being sent to you. Further copies will be sent if necessary.

6. It will be observed that the record book provides for certain information (down to and including question 3) which should usually be available to the local authority, either in their rating or in their housing capacity, and can be inserted most conveniently before the visitor starts his work. Addresses should be inserted in such order as will result in the book following some form of geographical sequence. This will be most convenient both for the making of the survey and, if it should be necessary, for the operation of the scheme in emergency.

7. The visitor's function will be to ascertain:—

(a) The number of habitable rooms, where this information has not been inserted under 3 of the form.

- (b) the number of persons ordinarily resident in the house and, by deduction from the number of habitable rooms, the number of persons who can be accommodated ;
- (c) where a surplus is revealed, whether the home conditions are suitable for unaccompanied children. If the visitor reaches the conclusion that such is not the case a note should be made accordingly, and the matter need not be pursued by the visitor ;
- (d) where the home conditions are regarded as suitable, whether the householder elects in the event of emergency to receive and care for unaccompanied children up to the maximum on the basis of the Government scheme. Where the householder is unwilling after full explanation, or willing only to take a lesser number of children, the fact and the reason given should be noted.

8. It is desired that so far as possible the acceptance of children by householders should be voluntary, but they may properly be informed that those who do not accommodate children may be required to take other persons.

9. The visitors in their talks with householders, particularly at the outset of their operations, may find a variety of cases which may present special difficulty and perhaps some misapprehension as to what is required. The chief officer may think it desirable to arrange further meetings of visitors after a number of households have been visited, and such a meeting will no doubt assist visitors in resolving many such difficulties and misapprehensions.

There will be a number of persons who, though not unwilling to play their part, are not capable of undertaking the care of children. Instances to be anticipated are : (a) aged and infirm people living alone and not capable of doing more than look after themselves ; (b) houses where there is a confirmed invalid ; (c) persons living alone whose employment requires them to be absent all day ; in some such cases the householder may be willing to take in children on the understanding that a teacher or other helper will be accommodated with them and that some arrangements for care outside school hours can be made, e.g., communal recreative, feeding, laundry and other facilities. The making of such arrangements would be a field for the operation of local voluntary effort.

10. It may be that in some cases the visitor's report will indicate that the householder has already made private arrangements for the reception of relatives or other persons in the event of an emergency. The extent to which such private arrangements can be allowed to stand will need to be considered in the future, and the visitor should note full particulars of all arrangements which the householder purports to have made.

11. The requirements of the farming industry will need consideration. In wartime part of the Government's plans will be to increase home production. Arrangements under the scheme now in mind must therefore possess sufficient elasticity to allow for the housing of additional labour as may be required on the farms, and should not be such as to impede the ordinary activities of the farm. The degree of isolation is also a factor to be noted in considering the accommodation of children, regard being had to the availability of schools. The case of hotels and

boarding houses will require special consideration. For the purpose of the present survey they should be noted for their full accommodation. Lodging houses and houses letting apartments will be treated as private houses.

12. It is possible that in some cases there may be difficulty as to the adequacy of the water supply, in particular where the household is dependent upon a well. This should not ordinarily be a difficulty when the added population will be only one or two children, but the knowledge of the local authority will no doubt enable them to deal with any exceptional cases of this kind.

13. As the returns are received from visitors arrangements should be made to tabulate the results in such a way as to facilitate their submission to the Minister in the form provided.

The officer in charge of the survey should examine each visitor's book and make a provisional entry as to the number of transferred persons to be accommodated in each house. These numbers should be entered in the space provided at the bottom left-hand corner of the visitor's record form, and in the appropriate columns in the register as unaccompanied children, teachers or helpers, or others. Children accompanied by their mothers, or some other person who will be responsible for them, should be included in the last category. Where the householder purports to have made private arrangements for receiving additional persons in case of emergency, the numbers (if any) to be entered in column 6 will be the numbers who can be accommodated in the house after allowance has been made for such private arrangements, but the number of persons alleged to be covered by these arrangements should be separately entered in column 7.

Where a householder expresses unwillingness to offer accommodation the officer in charge should also record his opinion whether the reason given is sufficient to justify the exemption of the house either in whole or in part. If complete exemption is not in his view justified he should note the number of persons, other than unaccompanied children, which in his opinion should be taken and should enter this number on the record form.

An "Approved" rubber stamp or other mark of approval should be placed in the space provided at the bottom of the form.

It will be necessary to keep the information in the register up to date and a further communication will be addressed to the authority in due course as to the machinery suggested for this purpose.

14. The local authority will no doubt have information in their possession as to empty houses, and particular large empty houses which would provide accommodation for substantial numbers. Provision for the inclusion of these is made in Form Ev. 4, and in forwarding this summary to the Minister the Local Authority should include any suggestions they may have for making use of this accommodation. [A copy of this letter should also be sent to the County Council.] \*

15. There may be in addition other buildings, either permanent or temporary, which could be brought into use to supplement the accommodation. For obvious reasons schools should not be taken into account for this purpose, as they are likely to be required for the education of the children to be transferred under the Government scheme. School houses (which for this purpose should be confined to the accommodation

\* Not appropriate to County Boroughs.

normally occupied by teachers) should be treated as private houses. The desirability of scheduling any available accommodation which they contain for the reception of teachers accompanying children should be borne in mind. It is anticipated that teachers or helpers will accompany the children, possibly up to a maximum of one to every ten children, and the local authority in making their calculations should see that accommodation is available for these people.

16. The extent of any facilities already available or capable of being made readily available in camps, hostels, etc., should be ascertained. These should be separately noted in the same manner as hotels and boarding houses.

17. It is suggested that, as soon as the visitors have commenced their rounds of visits, a start should be made on the preparation of the register, by the insertion of all available information, such as address of dwelling, number of habitable rooms, etc. As the record forms are returned by the visitors and checked by the officer in charge the additional information available should be inserted in the register, which should then be completed within a day or two of the receipt of the last visitor's book.

18. As soon as the register is complete a summary in the appropriate form should be forwarded to the Ministry of Health, and a copy of this summary should be forwarded to the Clerk of the County Council. The register itself should be preserved in some secure place with the visitors' books, since these will have to be distributed to those charged with the duty of operating the scheme should an emergency occur.

[26]

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## ALTERATION OF AREAS

*See AREAS OF LOCAL GOVERNMENT.*

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## ANALYST

*See FOOD AND DRUGS.*

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# ANIMALS

ORDERS, CIRCULARS OR MEMORANDA :—

Importation of Horses, Asses and Mules (Great Britain) Order, 1938

PAGE

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## ORDERS, CIRCULARS AND MEMORANDA

### IMPORTATION OF HORSES, ASSES AND MULES (GREAT BRITAIN) ORDER, 1938

*S. R. & O., 1938, No. 272*

*March 29, 1938*

(5688)

The Minister of Agriculture and Fisheries, by virtue and in exercise of the powers vested in him under the Diseases of Animals Acts, 1894 to 1937, and of every other power enabling him in this behalf, hereby orders as follows :—

#### *Regulation of Importation of Horses, Asses and Mules into Great Britain*

1. No horse, ass, or mule, brought to Great Britain from any other country except Northern Ireland, Ireland, the Channel Islands, or the Isle of Man, shall, subject to the provisions of Articles 2 and 3 of this Order, be landed in Great Britain unless it is accompanied by a certificate of a duly authorised Veterinary Officer of the Government of the country of origin whence the animal was brought, stating :—

- (a) For purposes of identification the breed, age and sex of the animal ;
- (b) that the animal was examined by a veterinary officer of the said Government immediately before it was moved to a port for shipment to Great Britain and that he found that the animal did not show symptoms of glanders (including farcy), epizootic lymphangitis, ulcerative lymphangitis, dourine, horsepox, sarcoptic mange, psoroptic mange, influenza, ringworm, strangles, infectious equine anæmia or encephalomyelitis ;
- (c) that the animal was tested by a veterinary surgeon with mallein within ten days before the date of shipment and did not re-act ;
- (d) that during the period of six months immediately preceding the said movement to a port for shipment, the animal was kept on, or within a radius of fifteen miles from, any premises on which infectious equine anæmia then existed or had previously existed within the aforesaid period of six months ; and



- (e) that during the period of twenty-eight days immediately preceding the said movement to a port for shipment, the animal was not kept on, or within a radius of fifteen miles from, any premises on which encephalomyelitis then existed or had previously existed within the aforesaid period of twenty-eight days.

*Special Provision as to Importation of Horses, Asses and Mules from Iceland and the Farøe Islands*

2. In the case of horses, asses or mules landed from Iceland or the Farøe Islands the information specified in paragraph (c) of Article 1 of this Order may be omitted from the certificate required by that Article.

*Special Provision for Race-horses, Thoroughbred Mares for Service, Polo-Ponies, Performing animals and animals intended for exportation within 14 days*

3. In the case of an importation of any thoroughbred horse for the purpose of being run in a race, or of a thoroughbred mare imported for service, or of a trained pony for playing polo, or of a performing animal, or of an animal intended for exportation from Great Britain within fourteen days after landing, the information specified in paragraph (c) of Article 1 of this Order may be omitted from the certificate, provided that in all such cases the certificate shall be accompanied by a declaration signed by the owner or person in charge or consignor of the animal, stating (i) the estimated value of the animal, (ii) the name and address of the consignee in Great Britain, (iii) the address of the stables to which the animal is consigned, and (iv) that the animal is being imported for one of the above-mentioned purposes only.

*Provisions as to Certificates and Declarations*

4.—(1) Certificates and declarations required by this Order shall be in the forms set forth in the First Schedule hereto, or to the like effect.

(2) A certificate or declaration may refer to more than one animal, but the full particulars required thereon shall be clearly given in respect of each animal referred to in the certificate or declaration.

(3) The certificates and declarations required by this Order shall be delivered up on the landing of the animals referred to in the certificates by the person in charge of the animals to an Officer of Customs and Excise at the port of landing.

*Power for Ministry to require Mallein Test on Arrival in Great Britain*

5.—(1) For the purposes of preventing the introduction or spread of glanders or farcy, the Minister may cause any horse, ass, or mule landed in Great Britain from any other country except Northern Ireland, Ireland, the Channels Islands, or the Isle of Man to be tested with mallein by a Veterinary Inspector at such time not later than fourteen days after the landing of the animal as the Minister may think fit. The owner of the animal and occupier of the premises where the animal is located shall give all necessary facilities for such testing.

(2) Unless the Veterinary Inspector is satisfied as a result of the application of the test that the animal is not affected with glanders, the animal shall be dealt with under and in accordance with the provisions of the Glanders or Farcy Order of 1938.

#### *Revocation*

6. The Orders described in the Second Schedule hereto shall be and are hereby revoked.

#### *Local Authority to enforce Order*

7. This Order shall, except where it is otherwise provided, be executed and enforced by the Local Authority.

#### *Offences*

8. Any person committing, or aiding, abetting, counselling or procuring the commission of any breach of the provisions of this Order or, with intent unlawfully to evade this Order, making a declaration knowing the same to be falsely made, shall be liable on conviction to the penalties provided by the Diseases of Animals Acts, 1894 to 1937.

#### *Extension of definitions of "disease" and "animals"*

9. For the purposes of the Diseases of Animals Act, 1894, and of this Order (except Sections four, twenty-four, twenty-seven and twenty-eight of that Act), the definitions of the expressions "animals" and "disease" are hereby respectively extended as follows:—

The definition of the expression "animals" is extended so as to comprise horses, asses and mules.

The definition of the expression "disease" is extended so as to comprise glanders (including farcy), epizootic lymphangitis, ulcerative lymphangitis, dourine, horsepox, sarcoptic mange, psoroptic mange, influenza, ringworm, strangles, infectious equine anæmia or encephalomyelitis.

10. The Interpretation Act, 1889, shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

#### *Commencement*

11. This Order shall come into operation on the first day of June, nineteen hundred and thirty-eight.

#### *Short Title*

12. This Order may be cited as the Importation of Horses, Asses, and Mules (Great Britain) Order of 1938. [27]

\* \* \* \* \*

## FIRST SCHEDULE

IMPORTATION OF HORSES, ASSES AND MULES (GREAT BRITAIN) ORDER  
OF 1938

*Form of Veterinary Certificate required to accompany Horses, Asses or Mules  
brought to Great Britain from Abroad*

*Certificate*

I, the undersigned, being a duly authorised Veterinary Officer of the Government of ..... hereby certify—

(1) that the animal(s) described below has (have) this day been examined by a veterinary officer of the said Government who found that the animal(s) did not show symptoms of glanders (including farcy), epizootic lymphangitis, ulcerative lymphangitis, dourine, horse pox, sarcoptic mange, psoroptic mange, influenza, ringworm, strangles, infectious equine anaemia or encephalomyelitis ;

(2) that (each of) the animal(s) described below was tested with mallein by a veterinary surgeon on the date(s) mentioned, that is, within 10 days before the date of intended shipment of the animal(s) to Great Britain, and that the animal(s) did not react ;

(3) that during the period of six months immediately preceding the date of shipment to Great Britain the animal(s) was (were) not kept on, or within a radius of 15 miles from any premises on which *infectious equine anaemia* then existed or had previously existed within the aforesaid period of six months ; and

(4) that during the period of 28 days immediately preceding the date of shipment to Great Britain the animal(s) was (were) not kept on, or within a radius of 15 miles from any premises on which *encephalomyelitis* then existed or had previously existed within the aforesaid period of 28 days.

*Horses, Asses or Mules referred to in the above Certificate*

Description.			Date of Mallein test.	Result of test.
Breed.	Age.	Sex.		

Signature of Veterinary Officer .....

of the Government of .....

Dated this.....day of....., 19....

# IMPORTATION OF HORSES, ASSES AND MULES (GREAT BRITAIN) ORDER OF 1938

*Form of Declaration regarding Race Horses, Thoroughbred Mare for Service,  
Polo Ponies, Performing Animals, or Animals intended for Exportation.*

I, .....being the {  $\begin{matrix} \uparrow \text{ (Owner)} \\ \uparrow \text{ (person in charge)} \\ \uparrow \text{ (Consignor)} \end{matrix}$  }  
of the animal described below hereby declare that the animal is—

I.  $\uparrow$  a thoroughbred horse and is being imported for the purpose of being run in a race ;

II.  $\uparrow$  a thoroughbred mare and is being imported for service ;

III.  $\uparrow$  a pony trained and imported for the purpose of playing polo ;

IV.  $\uparrow$  a performing animal, and is being imported for the purpose of performing ;

V.  $\uparrow$  intended to be exported from Great Britain within 14 days after landing.

Animal referred to in above Declaration

Estimated value.	Name and address of Consignee in Great Britain.	Address of stables to which animal is consigned.

Dated this.....day of....., 19....

Signature of Owner, Person in Charge, or Consignor.....

$\uparrow$  Strike out the words which are inapplicable.

## SECOND SCHEDULE

*Orders revoked*

No.	Date.	Short title.
587	1921. 12th April ...	Importation of Horses, Asses and Mules (Great Britain) Order of 1921 (a).
712	25th July ...	Importation of Horses, Asses and Mules (Great Britain) Order of 1921 (No. 2) (b).
1168	1922. 27th September	Importation of Horses, Asses and Mules (Great Britain) Order of 1922 (c).

(a) S. R. & O. 1921 No. 2080 (printed in London Gazette, April 15, 1921, not in S. R. & O. series).

(b) S. R. & O. 1921 No. 1222 (printed in London Gazette, July 26, 1921, not in S. R. & O. series).

(c) S. R. & O. 1922 No. 1073 (printed in London Gazette, September 29, 1922, not in S. R. & O. series).

# APPROVED SCHOOLS

See INFANTS, CHILDREN AND YOUNG PERSONS.

## AREAS OF LOCAL GOVERNMENT

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## ORDERS, CIRCULARS AND MEMORANDA

### ISLES OF SCILLY ORDER, 1938

*S. R. & O., 1938, No. 110*

*February 16, 1938*

94496

The Minister of Health upon the application of the Council of the Isles of Scilly and in the exercise of his powers under section 292 of the Local Government Act, 1933, and of all powers enabling him in that behalf, hereby makes the following order :—

*Article 1.*—This order may be cited as the Isles of Scilly Order, 1938, and shall come into operation on the first day of April, 1938.

*Article 2.*—(1) In this order unless the context otherwise requires the following expressions have the meanings hereby assigned to them :—

“ the Provisional Order ” means the Local Government Board’s order of the 19th day of May, 1890, as altered and set out in the schedule to the Local Government Board’s Provisional Order Confirmation (No. 6) Act, 1890 ;

“ the Minister ” means the Minister of Health ;

“ the Council ” means the Council of the Isles of Scilly ;

“ the Isles ” means the islands situate within that part of the sea which is coloured brown, green, pink, yellow and blue on the maps ;

“ the maps ” means the three maps each marked “ Map of the Isles of Scilly, 1890 ” and sealed with the official seal of the Local Government Board.

(2) The Interpretation Act, 1889, applies to the interpretation of this order as to the interpretation of an Act of Parliament.

*Article 3.*—(1) The Council shall exercise and perform the functions conferred or imposed on local authorities by section 68 to the Public Health Act, 1925, and section 16 of the Restriction of Ribbon Development Act, 1935.

*Article 4.*—Article XIX of the Provisional Order shall apply to the expenses incurred or payable by the Council under any enactment applying to the Isles by reason of this order and Article XXII of such Order shall apply to any land or buildings which the Council are authorised to purchase or to alter adapt or erect by any enactment applying to the Isles by reason of this order as if the said enactments were made applicable to the Isles by the Provisional Order.

*Article 5.*—Any question or difference arising as to the interpretation of this order or as to the provisions applied by this order or as to the exercise and performance in the Isles of any functions conferred or imposed by this order on the Council, or as to any other act matter or thing under this order may on the application of the Council be referred to the decision of the Minister, whose decision thereon shall be final and conclusive.

*Article 6.*—The Minister may make such orders as appears to him necessary for bringing this order into full application in the Isles and such orders may modify any provision in this order or in any enactment applied by this order or conferring or imposing functions on local authorities so far as may appear to the Minister necessary for that purpose.

*Article 7.*—Articles XXVIII, XXX, XXXI and XXXII of the Provisional Order shall apply to the provisions of this order as if the said provisions were contained therein.

*Article 8.*—As from the coming into operation of any order made by the Minister upon the application of the Council and in exercise of his powers under section 292 of the Local Government Act, 1933, for regulating the application of the said Act to the Isles this order shall be read and construed as one therewith, and Articles 4, 5, 6 and 7 of this order shall thereupon cease to have effect. [29]

\* \* \* \* \*

## ISLES OF SCILLY ORDER, 1938 (NO. 2)

*S. R. & O., 1938, No. 668*

*July 8, 1938*

97245

The Minister of Health upon the application of the Council of the Isles of Scilly and in the exercise of his powers under section 292 of the Local Government Act, 1933, and of all powers enabling him in that behalf, hereby makes the following order :—

*Article 1.*—This order may be cited as the Isles of Scilly Order, 1938 (No. 2), and shall come into operation on the first day of August, 1938.

*Article 2.*—(1) In this order unless the context otherwise requires the following expressions have the meanings hereby assigned to them :—

“ the Provisional Order ” means the Local Government Board’s order of the 19th day of May, 1890, as altered and set out in the schedule to the Local Government Board’s Provisional Order Confirmation (No. 6) Act, 1890 ;

“ the Minister ” means the Minister of Health ;

“ the Council ” means the Council of the Isles of Scilly ;



" the Isles " means the islands situate within that part of the sea which is coloured brown, green, pink, yellow and blue on the maps ;

" the maps " means the three maps each marked " Map of the Isles of Scilly, 1890 " and sealed with the official seal of the Local Government Board.

(2) The Interpretation Act, 1889, applies to the interpretation of this order as to the interpretation of an Act of Parliament.

*Article 3.*—(1) The Council shall exercise and perform the functions conferred or imposed :—

(a) on county councils by—

The Air-Raid Precautions Act, 1937 ;

Section 97 of the Housing Act, 1936 ;

(b) on rural district councils by sub-section (3) of section 1 of the Air-Raid Precautions Act, 1937.

*Article 4.*—Article XIX of the Provisional Order shall apply to the expenses incurred or payable by the Council under any enactment applying to the Isles by reason of this order and Article XXII of such Order shall apply to any land or buildings which the Council are authorised to purchase or to alter adapt or erect by any enactment applying to the Isles by reason of this order as if the said enactments were made applicable to the Isles by the Provisional Order.

*Article 5.*—Any question or difference arising as to the interpretation of this order or as to the provisions applied by this order or as to the exercise and performance in the Isles of any functions conferred or imposed by this order on the Council, or as to any other act matter or thing under this order may on the application of the Council be referred to the decision of the Minister, whose decision thereon shall be final and conclusive.

*Article 6.*—The Minister may make such orders as appear to him necessary for bringing this order into full application in the Isles and such orders may modify any provision in this order or in any enactment applied by this order or conferring or imposing functions on local authorities so far as may appear to the Minister necessary for that purpose.

*Article 7.*—Articles XXVIII, XXX, XXXI and XXXII of the Provisional Order shall apply to the provisions of this order as if the said provisions were contained therein.

*Article 8.*—As from the coming into operation of any order made by the Minister upon the application of the Council and in exercise of his powers under section 292 of the Local Government Act, 1933, for regulating the application of the said Act to the Isles this order shall be read and construed as one therewith, and Articles 4, 5, 6 and 7 of this order shall thereupon cease to have effect. [30]

## CASES

*Extension of City Boundaries to Include Part of County Area—Loss to County Ratepayers—Whether City Council Liable to Compensate County Council—Local Government Act, 1888 (c. 41), s. 62—Local Government Act, 1894 (c. 73), s. 68, Sched. I, Part II—Local Government (Adjustments) Act, 1913 (c. 19), s. 1 (1) (b)—Local Government (County Boroughs and Adjustments) Act, 1926 (c. 38), s. 5—Oxford Extension Act, 1928 (c. lxxxiv), ss. 33, 61—Local Government Act, 1929 (c. 17), ss. 30, 134.*

By the Oxford Extension Act, 1928, certain areas, profitable from a rating authority's point of view, were transferred from respondents to appellants. By the Local Government Act, 1929, liability to repair roads was in certain cases transferred to county councils. Respondents, the county council, claimed that this involved them in a loss which was a result of the Oxford Extension Act, 1928, and for which they were entitled to be compensated by appellants, by reason of the Local Government (Adjustments) Act, 1913. The Oxford Extension Act, 1928, came into force four days after the Local Government Act, 1929, received the Royal Assent, but the Act of 1929 did not come into force until a year later :—

*Held* : as the language of s. 1 of the Act of 1913 could not be fitted to the facts of the present case, there being no increase of an existing burden in consequence of the alteration of boundaries, respondent county council were not entitled to receive compensation for the loss sustained.

Order of Court of Appeal ([1938] 1 All E. R. 801) discharged, and order of the Divisional Court restored.—OXFORD CITY COUNCIL *v.* OXFORDSHIRE COUNTY COUNCIL, [1938] 4 All E. R. 721, H. L. [31]

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## ARTIFICIAL CREAM

*See* FOOD AND DRUGS.

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## ASSESSMENT FOR RATES

*See* RATES AND RATING.

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## ASYLUMS

*See* HOSPITALS; PERSONS OF UNSOUND MIND.

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## ASYLUMS OFFICERS' SUPERANNUATION ACT, 1909

*See* SUPERANNUATION.

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## AUDIT

*See* FINANCE.

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# BLIND PERSONS

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## STATUTES

### THE BLIND PERSONS ACT, 1938

( 1 & 2 Geo. 6, c. 11 )

#### ARRANGEMENT OF SECTIONS

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*An Act to lower from fifty years to forty years the age which blind persons must have attained in order to be entitled to old age pensions under the Old Age Pensions Act, 1936 ; and to amend the law with respect to the provision of assistance in relation to such persons by local authorities. [32]* [30th March, 1938.]

**1. Lowering of age at which non-contributory old age pensions may be paid to blind persons.**—The age which a blind person must have attained in order to be entitled to receive an old age pension under the Old Age Pensions Act, 1936, shall be forty years instead of fifty years, and accordingly section two of that Act shall have effect as if, in paragraph (a) of subsection (1) of that section, for the word “fifty” there were substituted the word “forty,” and as if, in paragraph (b) of that subsection, for the word “thirty” there were substituted the word “twenty.” [33]

For s. 2 of the Old Age Pensions Act, 1936, see 29 Halsbury's Statutes 1052.

**2. Duty of local authorities to promote welfare of blind persons.**—(1) For subsection (1) of section two of the Blind Persons Act, 1920, (hereafter in this Act referred to as “the principal Act”) there shall be substituted the following subsections :—

“(1) It shall be the duty of the council of every county or county borough to make arrangements for promoting the welfare of blind persons ordinarily resident in the area of the council, and the things which such a council may do in the performance of their said duty shall include the provision and maintenance,

or the making of contributions towards the provision and maintenance, of workshops, hostels, homes or other places (whether in or outside the area of the council) for the reception of blind persons, and any other things the doing of which appears to the council to be desirable for the purpose of the performance of that duty.

In determining, in the case of any blind person, whether or not, or to what extent, to provide financial assistance under the preceding provisions of this subsection, the council shall take into account not only the needs of the blind person, but also the needs of any members of the household of which the blind person is a member who are dependent on him, and the rules laid down in paragraphs (a) to (e) of subsection (3) of section thirty-eight of the Unemployment Act, 1934 (which require certain assets of the person concerned to be disregarded), shall be complied with in computing the resources of any person in order to determine his needs for the purposes of this subsection.

(1A) The council of any county or county borough may pay, or contribute to the payment of, any expenses payable in connection with the funeral of a person who, at the time of his death, was a blind person ordinarily resident in the area of the council, or who at the time of his death was a member of the household of which such a blind person as aforesaid was at that time a member and was dependent on him." [34]

For s. 2 (1) of the Blind Persons Act, 1920, see 20 Halsbury's Statutes 593. The powers are exercisable at the discretion of the authority through a committee which may include persons not members of the council.

For the Unemployment Act, 1934, s. 38 (3), see 27 Halsbury's Statutes 790.

(2) Any assistance which after the commencement of this Act could, apart from this subsection, be provided either by way of poor relief or by virtue of section two of the principal Act, not being either assistance in an institution or medical assistance, shall be provided exclusively by virtue of that section and not by way of poor relief. [35]

This subsection gives further effect to the principle introduced by L.G.A. 1920, s. 5 (10 Halsbury's Statutes 885), which required county and county borough councils, in preparing administrative schemes for the purposes of their Poor Law functions, to have regard to the desirability of providing assistance which could be given either under the Poor Law Acts or under (*inter alia*) the Blind Persons Act, 1920, otherwise than by way of poor relief. The principle is now mandatory as respects blind persons.

**3. Recovery of cost of assistance by one English local authority from another.**—(1) Where, during an appropriate quinquennial period, any assistance is, by virtue of section two of the principal Act, provided by a council in England (hereinafter referred to as "the assisting council") in the case of a blind person who, within the five years immediately preceding that quinquennial period, has been ordinarily resident for the requisite period in the area or in each of the areas of some other council or councils in England having functions under the said section, then, unless the area of the assisting council is the area in England in which the blind person was last ordinarily resident for the requisite period within the said five years, the amount of any expenditure on the part of the assisting council which is specifically attributable to the provision of the said assistance by that council shall be a debt due to them from the other council or, as the case may be, from that

one of the other councils in whose area the blind person was last ordinarily resident for the requisite period within the said five years.

In this subsection the expression "appropriate quinquennial period" means, in relation to a blind person, any period of five consecutive years beginning either on the first day after the commencement of this Act on which any assistance is, by virtue of section two of the principal Act, provided in his case by a council in England, or on the expiration of five, or an exact multiple of five, years from the beginning of the said day; and the expression "requisite period" means a period of twelve or more consecutive months. [36]

(2) If any dispute arises on the question whether or not any sum is recoverable from a council by virtue of this section, or as to the amount of any sum so recoverable, the dispute shall, unless the parties otherwise agree, be referred for determination to the Minister of Health.

Where any dispute is referred under this subsection to the Minister of Health, then at any stage of the proceedings the Minister may, and, if so directed by the High Court, shall, state in the form of a special case for the decision of the Court any question of law arising on the reference, but, save as aforesaid, the decision of the Minister shall be final. [37]

(3) Subsection (7) of section two of the principal Act (which determines for the purposes of that section the area in which a blind person is to be deemed to be ordinarily resident while an inmate of an institution for the blind) shall have effect as if the reference in that subsection to the purposes of that section included a reference to the purposes of this section. [38]

For s. 2 (7) of the principal Act, see 29 Halsbury's Statutes 1054.

#### 4. Provisions as to blind persons employed at institutions in Scotland. [39]

5. Interpretation.—In the principal Act and in this Act the expression "blind person" means a person so blind as to be unable to perform any work for which eyesight is essential; and in this Act the expression "medical assistance" includes the supply of medicine. [40]

6. Short title, citation, commencement and extent.—(1) This Act may be cited as the Blind Persons Act, 1938, and the principal Act and this Act may be cited together as the Blind Persons Acts, 1920 and 1938.

(2) This Act shall come into operation on the first day of April nineteen hundred and thirty-eight.

(3) This Act shall not extend to Northern Ireland. [41]

For the Blind Persons Act, 1920, see 20 Halsbury's Statutes 593.

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## BREAD

*See FOOD AND DRUGS.*

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## BUILDING

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## CASES

*Moveable Dwellings—Vans—Land Occupied by Vans Used for Human Habitation—Showmen—No Permission from Corporation—Birmingham Corporation Act, 1935 (c. cxxii), s. 43.*

Appellant was the owner of certain land within the jurisdiction of the corporation of Birmingham. Without having obtained the approval of the corporation, she allowed certain showmen to occupy this land with the vans in which they lived :—

*Held* : whereas the exemption contained in Birmingham Corporation Act, 1935, s. 43 (3) (b), operated in favour of the showmen, it did not operate in favour of the owner of the land, who had therefore been guilty of an offence under this Act.—*DRAKELEY v. MANZONI*, [1938] 1 All E. R. 67 ; 82 Sol. Jo. 156 ; 36 L. G. R. 110 [42]

*Boundaries—Party Wall—Appellants Entitled to Half of Wall and to Use of Entire Wall for Support—Wall Rebuilt as an Arcade by Respondents—Whether Appellants' Rights Infringed—London Building Act, 1930 (c. clviii), s. 117.*

The respondents had obtained an award under the London Building Act entitling them to pull down a wall which contained windows and to rebuild it with openings reaching down to the ground. This work was being done at the suggestion of the local authority and in order to provide against congestion among persons coming out of a cinema. By virtue of an indenture dated June 24, 1906, the appellants were entitled "to one-half of the wall . . . and to the use of the said wall for the support of any buildings or erections which he or they may at any time erect or rebuild over Hunt's Court" :—

*Held* : the rebuilding of the wall in such a form was an interference with the appellants' rights, and the surveyors who made the award had exceeded their jurisdiction.—*BURLINGTON PROPERTY CO., LTD. v. ODEON CINEMAS, LTD.*, [1938] 3 All E. R. 469 ; 82 Sol. Jo. 624, C. A. [43]

## BUTTER, MARGARINE AND CHEESE

See FOOD AND DRUGS.



## CANALS

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## CASES

*Powers—Supply of Water to Railway Company—Statute Restricting Supply to Mills and Works on Adjoining Land—Rochdale Canal Act, 1899 (c. cclvii), s. 37.*

A canal company supplied a railway company at two points with water for the purpose of raising steam in the latter company's locomotive engines. The centrifugal pumps, suction-pipe and storage-tanks for the supply of the water were installed by, and were the property of, the railway company. Under the Rochdale Canal Act, 1899, s. 37, the supply of water by the canal company was permitted, *inter alia*, for the purpose of condensing or raising steam for mills or works within 100 yards of the canal :—

*Held* : (i) railway lines, troughs and signal-wires were not " works " within the meaning of the Act so as to enable water to be supplied to them for the purpose of enabling steam to be raised or condensed in respect thereof ;

(ii) the pumps, pipes, water-tanks and water-troughs were not " works " within the Act, nor was water supplied to them for the purpose of raising steam in or for them, and the supply to the railway company was, therefore, *ultra vires*.—A.-G. (ROCHDALE CORPN.) v. ROCHDALE CANAL CO., [1938] 4 All E. R. 664 ; 55 T. L. R. 153 ; 82 Sol. Jo. 971.

Decision of BENNETT, J., affirmed :—[1939] 3 All E. R. 57 ; 55 T. L. R. 754 ; 83 Sol. Jo. 437, C. A. [44]

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## CATCHMENT AREAS AND BOARDS

*See LAND DRAINAGE.*

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## COMPENSATION ON ACQUISITION OF LAND

*See LAND, ACQUISITION, SALE, ETC., OF.*

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## COMPULSORY PURCHASE OF LAND

*See LAND, ACQUISITION, SALE, ETC., OF.*

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# CONTRACT

CASES :—

Bedford (Duke) v. Bucks Water Board, [1938] 1 All E. R. 199

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## CASES

*Agreement made on behalf of Joint Board before Board Constituted—Bucks Water Act, 1937 (c. xcv), s. 38—Contract binding on Board.*

A water board constituted by a private Act consisted of representatives of a county council and four rural district councils, and it was provided by that Act that all agreements and conveyances, etc., made by these separate local authorities should on and after the appointed day be binding and of as full force and effect in every respect in favour of or against the board as if the board had been a party thereto. The county council before the appointed day proceeded with the provision of a new pumping station, and entered into an agreement, acting on behalf of the board, for the purchase of a site. It was contended that the agreement, having been entered into before the board was in existence, could not be binding upon it :—

*Held* : the provision in the private Act made the agreement enforceable against the board.—BEDFORD (DUKE) v. BUCKS WATER BOARD, [1938] 1 All E. R. 199. [45]

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## CORRUPT AND ILLEGAL PRACTICES

*See ELECTIONS.*

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## CREAM

*See FOOD AND DRUGS.*

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## DEDICATION AND ADOPTION OF HIGHWAYS

*See HIGHWAYS.*

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## DISEASES OF ANIMALS

*See ANIMALS.*

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## DOCKS

*See HARBOURS, DOCKS AND WHARVES.*

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## DRAINAGE BOARDS AND DISTRICTS

*See LAND DRAINAGE.*

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## DRAINS

*See SEWERS AND DRAINS.*

# DRUGS

See FOOD AND DRUGS.

## EDUCATION

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### ORDERS, CIRCULARS AND MEMORANDA

#### EDUCATION CODE AMENDING REGULATIONS, NO. 1, 1939

*Draft S. R. & O., 1938*

*December 17, 1938*

1. The existing Regulations hereby amended are the Regulations for Public Elementary Schools contained in the Education Code, 1926.

2. The following paragraph is added to Article 21 of the existing Regulations, and shall have effect with respect to meetings held on or after the 1st day of June, 1938 :—

“(d) The absences of a child from not more than ten meetings in any school year may, if occasioned by the annual holiday of a parent, be recognised and treated as attendances.”

3. These Regulations may be cited as the Education Code Amending Regulations No. 1, 1939. [46]

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### SECONDARY SCHOOLS AMENDING REGULATIONS, NO. 2, 1938

*S. R. & O., 1938, No. 593*

*June 16, 1938*

1. The existing Regulations hereby amended are the Regulations for Secondary Schools, 1935, as amended by the Secondary Schools Amending Regulations No. 1, 1936.

2. In Article 17 of the existing Regulations the following paragraph is substituted for paragraph (a) :—

“(a) In the case of a School recognised for direct grant, a capitation grant of £8 13s. will be payable by the Board for each school year in respect of—

(i) pupils who at the beginning of that year are between eleven and nineteen years of age, and

(ii) pupils admitted to the School for the first time during that year who at the beginning of that year are between ten and eleven years of age,

but the capitation grant will be reduced to £4 10s. in the case of a School recognised under Article 16 (c).”

3.—(a) These Regulations shall have effect as from the 1st day of August, 1938, but shall not affect the operation of the existing Regulations in relation to periods prior to that date.

(b) These Regulations may be cited as the Secondary Schools Amending Regulations No. 2, 1938. [47]

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## STATE SCHOLARSHIPS REGULATIONS, 1938

*S. R. & O., 1938, No. 595*

*June 15, 1938*

1. These Regulations relate to the award of State Scholarships for students proceeding from Secondary Schools to Universities; and unless the context otherwise requires—

“The Board” means the Board of Education.

“University” means a University in England or Wales.

“Honours Degree” means a Degree conferred by a University, or a title of a Degree conferred on a woman by the University of Cambridge, which is accepted by the Board as an Honours Degree for the purposes of these Regulations.

“Approved” means approved by the Board for the purposes to which the context relates.

“Second Examination” means an examination approved as a Second Examination for Secondary School purposes, and “Examining Body” means the body conducting such an Examination.

“Secondary School” means a Secondary School in England or Wales, being a school for pupils who intend to remain for at least four years and up to at least the age of sixteen which provides a progressive course of general education of a kind and amount suited to an age range at least from twelve to seventeen.

2.—(a) The Board will award annually not more than three hundred and sixty State Scholarships tenable in each case for an approved course of study (other than in agriculture) leading up to an Honours Degree.

(b) A State Scholar must follow his approved course as a member or student of an Institution accepted by the Board for the purpose, being—

- (i) in the case of a University organised on a collegiate basis, a constituent College or other society recognised by the University ;
- (ii) in the case of London, a College incorporated in the University or a School of the University ;
- (iii) in other cases, the University itself.

(c) The Board may make it a condition of the award of a Scholarship that the holder shall reside in an approved College or Hostel.

(d) A Scholarship may be taken up immediately or after an approved interval, and will be tenable for three academic years ; but the Board may extend the tenure for a fourth year—

- (i) if the normal period for the approved course is at least four years ; or
- (ii) if an additional course (whether for a further Degree or not) is approved for the student on evidence of special attainments supported by a recommendation from the Institution ;

and where the Board are satisfied that the student cannot, for reasons of health, reasonably be expected to complete the approved course or courses in three years or four years, as the case may be, they may extend the period for which the Scholarship is tenable by such a period, not exceeding one year, as they think fit.

3. In order to be eligible for an award a candidate must—

- (a) be a British subject ;
- (b) pass a Second Examination and be nominated by the Examining Body, in accordance with approved arrangements, as having reached a standard giving reasonable expectation of obtaining an Honours Degree ;
- (c) have been in full-time attendance at a Secondary School for a period of not less than two years immediately preceding the date of the examination ;
- (d) be under the age of nineteen if a boy, or twenty if a girl, on the 31st July in the year of the examination.

4.—(a) In every year the Board will direct how many of the Scholarships shall be allocated to each Examining Body and how many in each case shall be available for boys and for girls respectively, and in so doing the Board will have regard to the numbers of boys and girls entering for each of the Second Examinations from Secondary Schools in one or more previous years.

(b) Each Examining Body will be required to allocate its Scholarships among boys and girls according to the direction of the Board : Provided that, if in any year the number of boys or of girls, as the case may be, who reach the required standard is less than the number of Scholarships available for that sex, the Examining Body shall add the surplus of such Scholarships to the Scholarships available for the other sex.

5.—(a) If a State Scholar satisfies the Board that he needs assistance to enable him to follow his approved course, the Scholarship will comprise such grants as the Board think fit in aid of his fees and, to an amount not exceeding £100 a year, of his maintenance.



(b) In determining the grants the Board will consider the recommendations of a University or College Committee appointed for the purpose, and will have regard to the student's private means, to any Scholarship or Exhibition held by him, and to the assistance which may reasonably be expected from persons who would in ordinary circumstances have borne or contributed to the expense of his education.

(c) Grants in aid of fees will ordinarily be paid to the Institution, and in aid of maintenance to the student through the Head or a nominee of the Institution, and the payments will be made by such instalments as the Board think fit.

6. Candidates will not be eligible for awards or grants under these Regulations if they are assisted as holders of the Board's Science Awards, or as recognised students in Training Colleges aided by the Board, or if the Board determine them to be ineligible on account of assistance of a like character from the Board or from any Government Department in the British Islands.

7.—(a) The tenure of a Scholarship is subject to satisfactory attendance, conduct and progress, and the Board will require to be satisfied on these matters from time to time by reports from the Head of the Institution or otherwise.

(b) Improvements in financial circumstances which might affect the amount of any grant under these Regulations must be communicated to the Board.

(c) A Scholarship may be revised or cancelled if the Board think proper.

8. If any question arises as to the interpretation of these Regulations the decision of the Board shall be final.

9.—(a) The State Scholarships Regulations, 1936, are hereby repealed, but this repeal shall be without prejudice to the continuance of any Scholarship already awarded, and no such Scholarship shall be revised (unless the Board in any particular case so direct) otherwise than in accordance with the repealed Regulations.

(b) These Regulations may be cited as the State Scholarships Regulations, 1938. [48]

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## ADULT EDUCATION REGULATIONS, 1938

*S. R. & O., 1938, No. 597*

*June 21, 1938*

### CHAPTER I

#### GENERAL PROVISIONS FOR COURSES OF INSTRUCTION

##### *Courses eligible for recognition*

1. In order to be recognised under these Regulations a course of instruction must be :—

(a) designed for the liberal education of adults, *i.e.*, persons of at least 18 years of age :



- (b) of sufficient public interest to be accepted as part of the public provision of higher education :
  - (c) so arranged in respect of the duration of the several meetings and the duration of the course as a whole as to offer to the students opportunity of making a continuous and progressive study :
  - (d) so conducted in respect of methods of instruction as to demand individual effort on the part of students ; *e.g.*, instruction by means of lectures only will not as a rule be approved, and the arrangements should provide for the participation of students in one or more of the following activities as may be appropriate, class exercises or discussions, tutorial instruction, practical exercises, reading under guidance, essay writing or other forms of home work.
2. Courses of the following types are not eligible for recognition under these Regulations :—
- (a) Courses promoted by institutions which are not suitable in character or financial position to receive aid from public funds ;
  - (b) Courses conducted for private profit, or farmed out to the teachers ;
  - (c) Courses which the Board consider to be more properly recognisable under other Regulations ;
  - (d) Courses planned for or mainly attended by persons in whose education another Department of State appears to the Board to be predominantly interested ;
  - (e) Courses of instruction in religious subjects, without prejudice however to the recognition of Courses which aim at the scientific study of the documents, history or philosophy of religion.

### *Responsible Body*

3.—(a) Each course must be under the control and direction of a Responsible Body.

(b) A Responsible Body will be held responsible by the Board for the efficiency of the instruction given in the Course and for the observance of the Regulations applicable to it ; the responsibility will be regarded as extending to the approval of the teacher of the Course and of the syllabus.

(c) A Responsible Body may control and direct a Course for which it does not take financial responsibility, but in that case must satisfy the Board that the requirements of Article 2 (a) are observed.

(d) Each Responsible Body must submit an Annual Financial Statement in such a form as may be directed by the Board.

### *Visiting of Courses*

4. Courses must be visited by persons appointed by, or approved by, the Responsible Body, for the purpose of securing that the administrative requirements of the Regulations, including those relating to registration, are observed.

*Premises*

5.—(a) Premises used for instruction under these Regulations must be sanitary, convenient for teaching purposes, reasonably quiet, and furnished with such equipment as may be necessary for efficient instruction in the Courses given in them.

(b) The plans of the site and building of any premises to be specially provided for work under these Regulations, or of any enlargement or alterations of existing premises made for such purposes, must be submitted in advance for the Board's approval; and the details of any proposals for the equipment of new premises or for the installation of new or additional equipment in existing premises must be similarly submitted in advance.

(c) Such plans of existing buildings as the Board may require in any particular case must be submitted.

*Teachers*

6.—(a) Teachers must be suitably qualified for the Courses which they conduct.

(b) If the number of Courses at a centre is considerable, the Board may require provision to be made for supervision of the teaching staff, for advice to students, and for any necessary co-ordination of the instruction given in the several Courses. Where in the opinion of the Board it is necessary, a Principal or Director of Studies must be appointed.

(c) Teachers must be paid by fixed salaries or at fixed rates.

(d) Teachers other than occasional teachers must be employed under written agreements. The agreement must define the conditions of service and indicate whether the teacher is employed in full time service exclusively in the capacity of a teacher, or in part time service in the capacity of a teacher, or partly in the capacity of a teacher and partly in another capacity.

(e) The Board must be satisfied that each teacher has adequate time available for the efficient conduct of his work under these Regulations.

(f) If a teacher is convicted of a criminal offence, or his engagement is terminated, whether by way of dismissal or resignation, on account of misconduct or grave professional default, the facts must at once be reported to the Board.

(g) If and so far as the Board declare a teacher to be unsuitable for employment on grounds of misconduct or grave professional default, the teacher must not be employed. Before taking action the Board will use every available means of informing the teacher of the charges against him and of giving him an opportunity for explanation.

*Students*

7.—(a) The admission of students to a Course must be so regulated as to exclude those for whom on educational grounds the Course is inappropriate.

(b) A student shall not be required, as a condition of being admitted to or of remaining in a Course, to attend or abstain from attending any religious worship, observance or instruction.

(c) No student may be refused admission to a Course on other than reasonable grounds.

(d) If it is proposed to charge no fees for a Course, the Board's approval must be obtained in advance.

(e) Arrangements should be made to ensure that, so far as may be possible, students attend regularly and for the full duration of the Courses to which they are admitted.

### *Administrative requirements*

8.—(a) Courses and the centres in which they are given must be open at all reasonable times to inspection by the Board, and evidence as to study by individual students must be produced if the Inspector calls for it.

(b) The prescribed statement of particulars for each Course must be completed and furnished to the Board as soon as possible, and in any case not later than fourteen days after the date of the first meeting.

(c) At least three days' notice of any change in the teacher of a Course, or of any alteration in the time-table affecting the place or day or hour of instruction, must be given to H.M. Inspector named for the purpose. If a shorter notice is inevitable, it should be given by telegram addressed by name to H.M. Inspector at "Instruction, Parl., London," or as regards Wales, "Principality, Parl., London."

(d) All registers and other records prescribed by the Board must be regularly kept in accordance with directions issued with them, and, if required by the Board through H.M. Inspector or otherwise, must be submitted for inspection forthwith.

(e) In order to be registered as having attended at a meeting a student must have arrived not more than 10 minutes after the beginning of the meeting, and the attendance must be cancelled if the student leaves more than 10 minutes before the end of the meeting.

(f) Visits of students accompanied by a teacher to museums, galleries and other places connected with the subjects of their Courses may be included in those Courses, provided that the arrangements are approved by H.M. Inspector in advance. If approval is given, the attendance of students may be registered.

(g) Such syllabuses as the Board may require must be promptly submitted.

(h) The Board may require the modification of any time-table or syllabus which appears to them unsuitable.

(i) All returns called for by the Board must be duly and punctually made.

(j) Before recognising a Course (other than a vacation or other non-local Course), the Board will invite the observations of the Local Education Authority of the area in which the Course is held.

(k) Where the conditions of employment render it desirable one or more of the regular meetings of a Course under Articles 13, 14, 16, 22 or 23 may be duplicated and the attendance of individual students may be registered at either, but not both, of each pair of meetings; but the special provisions of those Articles relating to the shift system shall apply only when provision is made in advance for duplicating all the meetings.

### *School Year*

9. The school year for the purposes of these Regulations is the twelve months beginning on 1st August and ending on 31st July. A Course of study which begins in one year and ends in the next year

may be treated for the purposes of recognition and grant as belonging to either of those years as the Board may direct.

### *Grant*

10.—(a) The full grant for each Course in respect of which the Regulations are satisfied, and the instruction efficient, will be three-quarters of the fee, exclusive of travelling and similar expenses, paid to the teacher, or a maximum prescribed for each type of Course, whichever may be the less.

(b) The full grant will be payable provided that the number of students on the roll who have attended not less than two-thirds of the meetings of the class during the year, and have done such written work as may be required by the teacher, reaches not less than a minimum standard prescribed for each type of Course.

(c) A proportionate reduction will be made from the full grant for each unit by which the number of students satisfying the prescribed conditions falls below the minimum standard prescribed for full grant.

(d) The foregoing paragraphs of this Article will not apply to Vacation Courses (Articles 15 and 24) or to full-time Courses in Residential Colleges (Article 34 (a)), and paragraphs (b) and (c) will not apply to University Extension Lectures (Article 18).

### *Inclusive Grant*

11.—(a) Notwithstanding the provisions of Article 10 the Board may aid the work of a limited number of tutors under a University or University College as Responsible Body by inclusive grants in substitution for separate grants in respect of the several Courses taken by them. The Board will not ordinarily aid by inclusive grants the work of more than two tutors at the same time under the same Responsible Body, but in exceptional cases the work of a third tutor may be so aided.

(b) A Responsible Body desiring to receive an inclusive grant must submit an application giving particulars of the qualifications and experience of the tutor in question and showing the general nature of the work he will undertake and the conditions of his employment. The Responsible Body must also submit for approval before the 1st September in each year the tutor's plan of work for the school year ending on the following 31st July. The plan must include at least one Three Year or Advanced Tutorial Class and may include other classes falling within the scope of Chapter II or Chapter III and pioneer work intended to develop adult education.

(c) The full grant in aid of a year's work done under an approved plan will be three-quarters of the payment, exclusive of travelling and similar expenses, made to the tutor in respect of that work, or a maximum of £300, whichever may be the less; and in deciding whether the inclusive grant shall be the full grant or the full grant less an equitable deduction, the Board will have regard to the conditions under which the amounts of separate grants would have been determined.

(d) Except as regards the calculation of grant, the ordinary provisions of these Regulations will apply to work under the approved plan falling within the scope of Chapter II or Chapter III. In respect of any other work done under the plan, such records must be kept as the Board may require after consultation with the Responsible Body.

## CHAPTER II

## EXTRA-MURAL AND SIMILAR COURSES UNDER UNIVERSITIES OR UNIVERSITY COLLEGES

12.—(a) Subject to the conditions laid down in this Chapter and in Chapter I of these Regulations, the Board may recognise certain extra-mural and similar Courses conducted under the control and direction of a University or University College as Responsible Body.

(b) The control and direction of the University or University College may be exercised directly, or through a committee or delegacy, or through a joint committee containing representatives of the University or University College and constituted expressly for the purpose.

(c) The instruction which may be recognised under this Chapter is that given in :—

- (i) Three Year Tutorial Classes ;
- (ii) Advanced Tutorial Classes ;
- (iii) Tutorial Class Vacation Courses ;
- (iv) University Sessional Classes ;
- (v) University Extension Lecture Classes ;
- (vi) University Extension Lectures.

(d) The Board must be satisfied that the students in Three Year Tutorial Classes, Advanced Tutorial Classes, University Sessional Classes and University Extension Lecture Classes have access to adequate provision of books bearing on their studies, that proper arrangements are made for guiding their reading, and that reasonable demands are made in the matter of written work.

*Three Year Tutorial Classes*

13.—(a) The Course of instruction must be such as reasonably to demand the attendance of students in a three years' study under the methods and conditions proper to a Tutorial Class, and where the subject of the Course is such as to make the standard of University work in Honours a possible aim, the Course must be planned to reach, within the limits of the subject, that standard.

(b) The Course must extend for each class over a period of not less than three years, and must occupy at least two hours a week for 24 weeks in each year, at least one-half of the time being devoted to class work. An extension of the Course beyond the third year must be specially approved by the Board.

(c) The roll of students must be closed not later than the end of the sixth meeting of the first year of the Course and the number of students on the roll at that time must not exceed 24, or in a class on the shift system 36. The Board may exceptionally permit these numbers to be increased to 32 or 48 respectively.

(d) Names may be removed from, but not added to, the roll up to the end of the twelfth meeting, immediately after which the roll must be sent to the Board. If a student dies at any time in a school year his name may be removed from the roll subject to the cancellation of his attendances in that year.

(e) Added students may be admitted after the roll has been closed, provided that their names are shown in the register, that the tutor is satisfied that they can take up the work at the stage reached by the



class, and that the total number of students on the register of the class for the year does not exceed 24, or in a class on the shift system 36. Added students admitted during the first or the second year of a Course will be entered on the roll as from the beginning of the year following that in which they joined, and will then be taken into account for grant.

(f) The maximum grant payable under Article 10 will be £60 (or for a class on the shift system £120) for each year of the Course. The minimum standard for full grant will be 12 students or two-thirds of the total number on the roll (whichever is the higher) for a class in its first year, 9 students or half the total number on the roll for a class in its second year, and 6 students or one-third of the total number on the roll for a class in its third or later year. In a class on the shift system the corresponding figures will be 24, 18 and 12.

(g) The Board may raise the maximum grant payable under Articles 13 (f) and 14 (f) to £75 (or for a class on the shift system £150), in the case of not more than one-quarter of the Three Year and Advanced Tutorial Classes conducted by a Responsible Body, if they are satisfied that the classes in question are taken by tutors of exceptional qualifications and experience. For the purposes of this paragraph a class on the shift system will be regarded as two classes, and classes aided by an inclusive grant under Article 11 will be disregarded.

#### *Advanced Tutorial Classes*

14.—(a) The Course must be planned to provide work of a distinctly more advanced standard than that of an ordinary Three Years' Course in the same subject, and each student must be certified by the tutor to be fully qualified to enter upon the work of the Course. Of the students enrolled at least two-thirds must have passed with satisfaction to their tutors and to the Board through a Three Year Tutorial Class in the same or a related subject.

(b) The Course must comprise not less than 12 meetings of not less than two hours' duration, to be held at least once in every two weeks of the period over which the Course extends.

(c) The number admitted to a class must be not less than 9 and not more than 24, or in a class on the shift system not less than 18 and not more than 36.

(d) The roll of students must be closed not later than the end of the fourth meeting, immediately after which it must be sent to the Board.

(e) The Board must be satisfied that the formation of Advanced Tutorial Classes will not adversely affect the provision of Three Year Classes in the neighbourhood.

(f) The maximum grant payable under Article 10 will be £60 (or for a class on the shift system £120). The minimum standard will be two-thirds of the total number of students on the roll.

(g) If there are less than 48 hours of instruction given by the tutor to the class as a whole, the maximum grant will be proportionately reduced.

#### *Vacation Courses*

15. The Board may make such grants as they may think fit in respect of Vacation Courses for selected students organised in connection with Tutorial Classes.



*University Sessional Classes*

16.—(a) The Course must be planned to provide work of a standard not lower than that looked for by the Board in the first year of a Three Year Tutorial Class.

(b) The Course must extend over not less than 20 and not more than 24 meetings of not less than  $1\frac{1}{2}$  hours' duration, and not more than one meeting may be held in any one week. At each meeting half the time must be given to class work.

(c) The number admitted to a Class must not exceed 32, or in a Class on the shift system 48.

(d) The roll of students must be closed not later than the end of the third meeting, and when closed must immediately be sent to the Board.

(e) The maximum grant payable under Article 10 will be at the rate of 37s. 6d. per meeting of 2 hours' duration, or 27s. 6d. per meeting of  $1\frac{1}{2}$  hours' duration. The minimum standard for full grant will be 12 students (in a Class on the shift system 24 students) or two-thirds of the total number on the roll, whichever is the higher.

(f) The Board may raise the maximum grant payable under Article 10 to 45s. per meeting of 2 hours' duration, or 35s. per meeting of  $1\frac{1}{2}$  hours' duration, in the case of not more than one quarter of the recognised University Sessional Classes conducted by a Responsible Body, if they are satisfied that the tutor's qualifications and his experience in the direction of students are exceptional. For the purposes of this paragraph Courses aided by an inclusive grant under Article 11 will be disregarded.

(g) In special circumstances the Board may recognise under this Article courses extending over less than 20 but not less than 12 meetings, but in ascertaining for the purposes of paragraph (f) of this Article the number of recognised University Sessional Classes conducted by a Responsible Body, two such shorter courses shall be reckoned as equivalent to one University Sessional Class.

*University Extension Lecture Classes*

17.—(a) The Course must extend over not less than 10 and not more than 24 meetings of not less than  $1\frac{1}{2}$  hours' duration, and not more than one meeting may be held in any one week. The meetings must be divided into lecture periods and class periods. Only those persons who are prepared to attend for whole meetings and to do written work may be entered on the roll of students. The lecturer must be personally responsible for the direction of the studies of students on the roll.

(b) The number admitted as students on the roll must not exceed 32.

(c) The roll of students must be closed not later than the end of the third meeting, and when closed must immediately be sent to the Board. A record, but not necessarily a nominal register, must be kept of the number of persons attending other than students.

(d) If the lecturer is not personally responsible for registering attendances of students on the roll and for recording other attendances, the arrangements must be approved by the Board in advance.

(e) The maximum grant payable under Article 10 will be at the rate of 37s. 6d. per meeting. The minimum standard for full grant will be 12 students so far as students on the roll are concerned, but the grant in respect of any meeting as ascertained under Article 10 will be

wholly withheld or reduced to such extent as the Board think fit if during the lecture period there are less than 32 attendances in all.

### *University Extension Lectures*

18.—(a) The Course must extend over not less than six meetings of not less than 1½ hours' duration, and not more than one meeting may be held in any one week. The meetings must be divided into lecture periods and discussion periods. Proper arrangements must be made for guiding the reading of the students.

(b) The lecturer appointed to conduct the Course must be an internal teacher of a University or other scholar of equivalent standing, and must be specially approved by the University or University College as suitable for the purpose.

(c) Not less than 75 students must enter for the Course, and no student shall be counted as having entered for the Course if he does not attend the first or second meeting.

(d) Arrangements for keeping records of the numbers in attendance at both lecture and discussion periods must be approved by the Board in advance.

(e) The maximum grant payable under Article 10 will be at the rate of 37s. 6d. per meeting. If any meeting is not attended during the lecture period by at least two-thirds of the students who have entered for the Course, and during the whole meeting by not less than twenty of the students who have entered for the Course, no grant will be payable in respect of that meeting, unless in any case the Board consider that the circumstances justify the payment of the grant in full or some part thereof.

### *Payment of Grant*

19. Such grant as may be calculated in respect of a Course recognised under this Chapter will be paid to the Responsible Body unless a Local Education Authority has accepted full financial responsibility for the salary of the teacher of a Course, in which event no grant is payable to the Responsible Body in respect of the Course. [50]

## CHAPTER III

### PART-TIME COURSES UNDER APPROVED ASSOCIATIONS, ETC.

20.—(a) The Board may recognise part-time Courses under the control and direction of an approved association undertaking adult education as one of its objects, or in exceptional circumstances under the control and direction of a University or University College which provides Tutorial Classes.

(b) Courses of the following types are recognisable under this Chapter :—

- (i) Terminal or Short Terminal Courses.
- (ii) One Year Courses.
- (iii) Vacation Courses.

### *Approval of Associations, etc.*

21.—(a) An association must be a national association, or a district branch of a national association, or such analogous body as the Board

may specially accept. It must satisfy the Board as to its constitution, financial standing, and generally as to its fitness to be the Responsible Body for Courses under its control and direction and the recipient of such public assistance as may be granted in aid of such Courses. (See also Article 34 (c).)

(b) An association will be expected to certify in regard to each Course under its control and direction, but not maintained by it, that the persons maintaining the Course are in a position to fulfil their agreement with the teacher of the Course.

#### *Terminal or Short Terminal Courses*

22.—(a) Courses which provide meetings of not less than  $1\frac{1}{2}$  hours' duration in not less than 12 weeks in the year will be recognisable as Terminal Courses.

(b) The roll of students who have joined the class must be closed not later than the end of the third meeting, and when closed must immediately be sent to the Board. Students joining after the closing of the roll cannot become effective for grant, and their attendances need not be registered.

(c) The maximum grant payable under Article 10 will be at the rate of 7s. 6d. per hour of instruction in the Course. The minimum standard for full grant will be 12 students, or in a Course on the shift system 24 students.

(d) The Board may raise the maximum grant payable under Article 10 to 12s. 6d. per hour if they are satisfied that instruction such as to justify the higher grant will be given in the Course. Any application for treatment under this provision must be made to the Board as soon as possible and in any case not later than fourteen days after the date of the first meeting.

(e) In special circumstances the Board may recognise Short Terminal Courses of less than 12 but not less than 6 meetings. For these Courses the roll must be closed not later than the end of the second meeting and the maximum grant will be at the rate of 6s. 8d. per hour. In other respects paragraphs (a), (b) and (c) of this Article will apply.

(f) If the Responsible Body satisfy the Board in advance that the sparsity of the population, the occupations of students, the distances they will have to cover, or other circumstances, make it difficult to obtain a normal enrolment of students attending regularly and punctually at a Terminal or Short Terminal Course, the Board may reduce the minimum standard for full grant to 9 students, and may permit two half-attendances by one student to be reckoned under Article 10 (b) as attendance by him at one meeting. For this purpose a half-attendance is attendance for not less than one-half of the duration of a meeting, and must be shown by a supplementary record giving the times of arrival and departure.

#### *One Year Courses*

23.—(a) Courses which provide meetings of not less than  $1\frac{1}{2}$  hours' duration, in not less than 20 weeks in the year, may be recognised as One Year Courses. In each meeting half the time must be given to class work, and the students must be prepared to do written work.

(b) The instruction in a One Year Course must be of a standard suitable for students who may proceed to a Three Year Tutorial Class,

but need not be arranged as a preparation for Three Year Tutorial Classes.

(c) The number of students admitted to a One Year Course must not exceed 32, or in a class on the shift system 48.

(d) The roll of students must be closed not later than the end of the fourth meeting, immediately after which it must be sent to the Board.

(e) The maximum grant payable under Article 10 will be £36 for a Course of 48 hours' duration (or £72 for a Course on the shift system of 96 hours' duration). The minimum standard for full grant will be 12 students (in a Course on the shift system 24 students), or two-thirds of the total number on the roll, whichever is the higher.

(f) If there are less than 48 hours of instruction in the Course (or 96 hours if it is on the shift system), the maximum grant will be proportionately reduced.

#### *Vacation Courses*

24. The Board may make such grants as they may think fit in respect of Vacation Courses for selected students organised in connection with classes recognised under this Chapter of the Regulations.

#### *Payment of Grant*

25. Any grant payable under this Chapter will be paid to the Responsible Body for the Course. [51]

### CHAPTER IV

#### RESIDENTIAL COLLEGES

26. A residential college, not being a University College or a Constituent College of a University, which gives full time instructions of a university standard in subjects of liberal education to adult students, whose full-time education has been interrupted by employment, may be recognised subject to the requirements laid down in this Chapter and in Chapter I of these Regulations so far as not inconsistent with this Chapter.

27. A College will not be eligible for recognition under this Chapter unless a substantial number of students take a full-time Course of at least one year's duration.

28. A student admitted to a full-time Course must be at least 20 years of age at the date of admission, and must have attended a course of instruction of one of the types contemplated in the preceding Chapters of these Regulations. The Board may exceptionally sanction the admission of other students, if their approval is sought in advance.

29.—(a) Educational responsibility for the College, and financial responsibility for its maintenance so far as not met out of grants and fees, must be undertaken by the same Responsible Body.

(b) The Board may decline to approve or to continue the approval of a Responsible Body which is not the Governing Body of a Charitable Foundation.

(c) The Board may require that the College shall be managed under and in accordance with a Scheme or minute or body of written regulations determining the constitution of a Governing or Advisory Body,

and defining the functions of such Body and of the Principal of the College, both as regards responsibility for general control and as regards immediate responsibility for the details of organisation, discipline and teaching. The instrument of government must be approved by the Board, with whom a copy thereof as approved must be deposited, and its provisions must not be varied or departed from without the approval of the Board.

30.—(a) Application to the Board for recognition of an institution as a College must be made by the Responsible Body not less than three months before the beginning of the first school year for which recognition is desired.

(b) Recognition, when given, will ordinarily be continued from year to year without a further application, but may be withdrawn at any time by the Board.

31. A printed Prospectus for each school year must be submitted for the approval of the Board in June of the previous school year, and when approved must be published for the information of the public. The Prospectus must contain the general regulations for the admission and certification of students and for the conduct of the College, and must show the subjects in which instruction will be given, the Courses normally available, and the dates between which instruction will be given in the coming year. The Prospectus must also contain a list of the College teaching staff.

32. There must be furnished to the Board as soon as possible after the end of each school year a general report setting out the results of the year's work, a summary of the accounts for the financial year last ended, a report upon the progress of the individual students and a schedule showing the total number of attendances made by each student in each term.

33. The College must be conducted under a Principal, with the aid of a teaching staff sufficient in number and qualifications for giving adequate instruction in each subject of the approved curriculum, except in so far as instruction by University teachers not forming part of the staff may be available.

34.—(a) Grant in aid of the tuition provided by the College will be paid to the Responsible Body in respect of each student who makes satisfactory progress in an approved full-time Course of at least one year's duration.

(b) The grant will be at the rate of not more than £28 a year for a man or £26 a year for a woman. In determining the rate of grant the Board will have regard to the character, efficiency and cost of the instruction.

(c) Part-time Courses, organised apart from the full-time Courses at the College, may be recognised and aided under Chapter III of these Regulations, so far as applicable. [52]

## CHAPTER V

### SUPPLEMENTAL PROVISIONS

35. The Board may withhold or make a deduction from grant if the requirements of these Regulations are not fulfilled.

36. If any question arises as to the interpretation of these Regulations, or as to whether any of the requirements thereof are fulfilled, or



as to the amount of any grant payable thereunder, the decision of the Board shall be final.

37.—(a) These Regulations shall have effect as from the 1st day of August, 1938, in substitution for the Adult Education Regulations, 1932, the Amending Regulations No. 1, 1934, and the Amending Regulations No. 2, 1935.

(b) These Regulations may be cited as the Adult Education Regulations, 1938. [53]

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## CASES

*Non-provided School—Repair—Liability—Managers—Public Authority—Public Authorities Protection Act, 1893 (c. 61), s. 1—Education Act, 1902 (c. 42), ss. 5, 6 (2), 7, 11—Education Act, 1921 (c. 51), ss. 29–35.*

Plaintiff's son was at the material time a pupil of a non-provided school. Plaintiff was invited to attend an exhibition of the pupils' work. The invitation was signed by the headmaster, and was issued with the authority of the managers of the school. Plaintiff attended, and was injured through the collapse of a floor due to want of repair. It was alleged that the managers of the school were in occupation only as the servants or agents of the general committee of the Church of England Schools Society. Defendants also relied upon the Public Authorities Protection Act, it being admitted that the action was not commenced within six months of the act complained of :—

*Held* : (i) plaintiff was an invitee, and not a mere licensee ;

(ii) the managers of the school were in occupation thereof, and not the general committee of the Church of England Schools Society ;

(iii) the duty to repair was imposed upon them by the Education Act, 1902, s. 7 ;

(iv) the managers were a public authority within the meaning of the Public Authorities Protection Act, and the action was therefore barred.—*GRIFFITHS v. MANAGERS OF ST. CLEMENT'S SCHOOL, LIVERPOOL, AND TRUSTEES OF CHURCH OF ENGLAND SCHOOLS SOCIETY*, [1938] 3 All E. R. 537. [54]

*Public Authorities—Limitation of Actions—What Bodies Protected—School Managers and Headmistress—Injury to Child Through Want of Supervision—Public Authorities Protection Act, 1893 (c. 61), s. 1—Education Act, 1921 (c. 51), ss. 29, 30, 31.*

Plaintiff, an infant, was injured at school during an authorised recreation period by the swinging to of a pair of iron gates, which crushed his hand. The accident happened on April 8, 1937, and on November 10, 1937, more than six months later, a writ was issued against defendants, who were respectively headmistress and managers of the school, claiming damages for breach of duty. Defendants pleaded the Public Authorities Protection Act, 1893. The school was a non-provided voluntary school, which, under the Education Act, 1921, received a grant towards the cost of education. The school and its body of managers were in existence before the passing of the Education Act, 1921. For the purposes of carrying out the provisions of the Act,



supervision and instruction, including recreation, were among the duties which the managers, with the assistance of the headmistress, had to perform. Plaintiff contended that the duty of supervision was not a public duty, but was owed to a particular class of children :—

*Held* : (i) the managers were a statutory body acting in the execution of the Education Acts ;

(ii) the duty of supervision was a duty owed to all the children who attended the school, and was a public duty protected by the Public Authorities Protection Act, 1893 ;

(iii) the headmistress was acting as the servant of the managers ;

(iv) the action was, therefore, barred as being out of time.

Decision of LEWIS, J. ([1938] 2 All E. R. 475), affirmed.—GREENWOOD v. ATHERTON, [1938] 4 All E. R. 686 ; 55 T. L. R. 222, C. A. [55]

*Corporal Punishment—By Assistant Mistress—Box on the Ear—Course of Employment—Liability of Managers of Non-provided School—Contribution—Law Reform (Married Women and Tortfeasors) Act, 1935 (c. 30), s. 6 (1), (2).*

Plaintiff, a schoolboy of ten years of age attending a non-provided school, was by reason of his lack of discipline boxed on the ear by his schoolmistress. As a result of the blow, which was found not to have been a violent one, the boy became deaf in one ear. The class in which the boy was working at the time of the accident was a large one consisting of forty-six boys. In an action for damages to which the managers of the school were made defendants with the schoolmistress, it was proved that there was an agreement between the schoolmistress and the managers, which was not proved to have been brought to the notice of parents, whereby she agreed to teach and conduct the school "in accordance with the requirements of the Board of Education and in accordance with the directions given from time to time by the managers." The only regulations dealing with corporal punishment proved in evidence were certain regulations of the borough education committee, made without the consent of the managers and not adopted by them. As between defendants, the managers claimed contribution from the mistress in respect of any damages awarded. It was contended that, as between employer and employee this was a claim for an indemnity, and, therefore, not within the Law Reform (Married Women and Tortfeasors) Act, 1935, s. 6 (1), (2) :—

*Held* : (i) the blow, though a moderate one, exceeded reasonable and lawful correction ;

(ii) the schoolmistress was the servant of the managers and the latter were jointly liable to plaintiff with her ;

(iii) the act of punishing the boy was one within the general scope of the employment of the mistress, and, as against third parties, the managers could not plead a limitation of her powers of punishment not known to the parents. On the facts, no such limitation was proved ;

(iv) the Law Reform (Married Women and Tortfeasors) Act, 1935, s. 6 (1), (2), although it speaks of contribution and excludes the case of a person entitled to be indemnified in respect of the liability in respect of which contribution is sought, contemplates a contribution amounting to 100 per cent. of the damages, which is in effect an indemnity ;

(v) the section applies where an employer claims to be indemnified by his employee ;

(vi) the fact that the class was a large one was not material in considering the question of contribution, which should be a contribution of 100 per cent., amounting to a complete indemnity by the mistress of the managers.—*RYAN v. FILDES*, [1938] 3 All E. R. 517. [56]

*Classes in Physical Training—Small Fee Charged—Classes Held Where Floor Highly Polished—Exercise in Nature of Game—Injury to Member of Class—Breach of Warranty—Volenti Non Fit Injuria.*

Plaintiff had joined a class in physical training organised by defendant council, and had paid a small fee upon joining. The exercises were performed in a hall which was used for dances and of which the floor was fairly highly polished. While performing an exercise in which the members of the class were hopping on one leg and making lunges at another member in a endeavour to compel that other to put his raised foot on the ground, plaintiff slipped and suffered injury. The whole class at the time were wearing rubber shoes. It appeared in evidence that it had been discussed whether the floor should be covered with matting or a drugget:—

*Held*: (i) the duty of the council was to provide a floor which was reasonably safe in the circumstances, and this they had failed to do:

(ii) the accident did not result from a risk which plaintiff had agreed to take, and the defence of *volenti non fit injuria* was not available.—*GILLMORE v. LONDON COUNTY COUNCIL*, [1938] 4 All E. R. 331; 44 T. L. R. 95; 82 Sol. Jo. 932. [57]

*Child taken to Hop Fields—No School within Three Miles—Non-attendance—Whether Reasonable Excuse.*

*HAYNES v. TURTON, HAYNES v. LEAR* (1938), 82 Sol. Jo. 585. [58]

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## EDUCATION AUTHORITY

*See* EDUCATION.

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## ELECTION OF DRAINAGE BOARDS

*See* LAND DRAINAGE.

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## ELECTION PETITION

*See* ELECTIONS.

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# ELECTIONS

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## STATUTES

### THE LOCAL GOVERNMENT (HOURS OF POLL) ACT, 1938

(1 & 2 Geo. 6, c. 59.)

*An Act to provide for the extension of polling hours at county council and borough council elections.* [59] [29th July, 1938.]

1. **Extension of hours of poll.**—Paragraph 3 of Part III of the Second Schedule to the Local Government Act, 1933, shall have effect as though the following were added thereto :—

“ Provided that where—

(a) a candidate nominated at an election of a councillor for an electoral division of a county, or

(b) a number of candidates nominated at an election of councillors for a borough not divided into wards, or at an election of councillors for a ward of a borough divided into wards, not being less than the number of councillors to be elected at the election,

by notice or notices in writing signed by him, or, as the case may be, by them, and delivered at the place at which notices of withdrawals from candidatures are required to be delivered not later than the time appointed for that purpose by Part II of this Schedule, requests, or as the case may be, request, that the poll at that election may be kept open till nine o'clock in the afternoon of the day on which the poll commences, then, subject to the succeeding provisions of this paragraph, the poll shall be kept open until nine o'clock in the afternoon of that day and no longer.

A notice given by any candidate for the purposes of the foregoing proviso shall be of no effect if the candidate is not validly nominated, or if he withdraws, or is deemed to have withdrawn, from his candidature, or if he withdraws the notice by a further notice in writing signed by him and delivered at the place aforesaid not later than the time appointed for the delivery of the first-mentioned notice.” [60]

For para. 3 of Part III of the Second Schedule to L.G.A. 1933, see 26 Halsbury's Statutes 480. Under that paragraph the hours of poll were from 8 a.m. to 8 p.m. and no longer.

**2. Short title and repeal.**—(1) This Act may be cited as the Local Government (Hours of Poll) Act, 1938.

(2) Section two hundred and forty-two of the Barking Corporation Act, 1933 (which relates to the hours of poll at municipal elections at the borough of Barking), is hereby repealed. [61]

## ORDERS, CIRCULARS AND MEMORANDA

### REGISTRATION OFFICERS AND RETURNING OFFICERS, 1938

*S. R. & O., 1938, No. 655*

*June 27, 1938*

Whereas the County Boroughs mentioned in the first column of the Schedule hereto were by the enactments and orders mentioned in the second column of the said Schedule respectively extended by the inclusion therein of areas in the Administrative Counties mentioned in the third column of the said Schedule and such areas are comprised in the Parliamentary Counties mentioned in the fourth column of the said Schedule :

Now therefore I, the Right Honourable Sir Samuel Hoare, Baronet, one of His Majesty's Principal Secretaries of State, do hereby, in pursuance of sections 12 and 28 of the Representation of the People Act, 1918, order as follows, viz. :—

1. Subject to any future direction under the Representation of the People Act, 1918, the Clerks of the County Councils of the Administrative Counties of Devon, Monmouth, East Sussex and the West Riding of Yorkshire shall continue to be the Registration Officers of the Parliamentary Counties of Devon, Monmouth, East Sussex and York, West Riding, respectively ; and the Town Clerks of Barnsley, Cardiff, Exeter, Hastings, Huddersfield and Sheffield shall continue to be the Registration Officers of the Parliamentary Boroughs of Barnsley, Cardiff, Exeter, Hastings, Huddersfield and Sheffield respectively.

2. Subject to any future direction under the Representation of the People Act, 1918, the Sheriffs of Devonshire, Monmouthshire, Sussex and Yorkshire shall continue to be the Returning Officers at elections for the Parliamentary Counties of Devon, Monmouth, East Sussex and York, West Riding, respectively ; the Sheriff of the City and County of the City of Exeter shall continue to be the Returning Officer at elections for the Parliamentary Borough of Exeter ; and the Lord Mayors of Cardiff and Sheffield and the Mayors of Barnsley, Hastings and Huddersfield shall continue to be the Returning Officers at elections for the Parliamentary Boroughs of Cardiff, Sheffield, Barnsley, Hastings and Huddersfield respectively.

3.—(1) This Order shall come into operation on the date hereof.

(2) This Order may be cited as the Registration Officers and Returning Officers Order, 1938.

## SCHEDULE

County Borough.	Extension Act or Order.	Administrative County.	Parliamentary County.
Barnsley ...	County of York, West Riding, Review Order, 1938 (Order of the Minister of Health dated the 24th February, 1938).	West Riding of Yorkshire.	York, West Riding.
Cardiff ...	Cardiff Extension Act, 1937 (1 Edw. 8 & 1 Geo. 6, ch. cxxx).	Monmouth ...	Monmouth.
Exeter ...	County of Devon and County Borough of Exeter (Alteration of Boundaries) Order, 1937 (Order of the Minister of Health dated the 28th September, 1937).	Devon ...	Devon.
Hastings ...	Hastings Extension Act, 1937 (1 Edw. 8 & 1 Geo. 6, ch. lxxiv).	East Sussex. ...	East Sussex.
Huddersfield	County of York, West Riding, Review Order, 1938 (Order of the Minister of Health dated the 24th February, 1938).	West Riding of Yorkshire.	York, West Riding.
Sheffield ...	County of York, West Riding and County Borough of Sheffield (Alteration of Boundaries) Order, 1938 (Order of the Minister of Health dated the 21st March, 1938).	West Riding of Yorkshire.	York, West Riding.

[62]

## CASES

*Rural District Councillors' Election—Petition Alleging Illegal Practice—Petition presented one day late owing to Bank Holiday—Parliamentary Elections Act, 1868 (c. 125), ss. 25, 49—Municipal Corporations Act, 1882 (c. 50), ss. 100 (1), 230—Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (c. 70), s. 25 (1)—Local Government Act, 1933 (c. 51), ss. 40 (2), 295—Municipal Election Petition Rules, 1883, r. 38—Rural District Councillors' Election Rules, 1934 (S. R. & O., 1934, No. 546), r. 5 (5).*

On April 5, 1937, a rural district election was held. On May 18, 1937, a petition was presented alleging illegal practices at this election. By the Rural District Councillors' Election Rules, 1934, r. 5 (5), such a petition must be presented within six weeks of the election. In this case, the last day of the six weeks was May 17, 1937, which was Whit Monday, on which day the master's office was closed. It was contended by the respondent that in such a case the Municipal Election Petition Rules, 1883, r. 38, applied, and that the petition should have been presented by posting in the letter-box of the master's office, and filing an affidavit on the next day:—

*Held:* the Local Government Act, 1933, s. 295 (1), governed the present case, and the petition had been correctly presented. Rule 38 applies only in cases where the master's office is closed upon the last day on which something is required or permitted to be done under the



Act. In this case, though the office is closed on Whit Monday, s. 295 (1) extended the time to Whit Tuesday, and on that day the office was open.

Decision of the Divisional Court (GODDARD and HILBERY, JJ.), reversed.—*Re* COUNTER'S PETITION, BUCKINGHAM *v.* COUNTER, [1938] 2 K. B. 90; [1938] 1 All E. R. 186; 107 L. J. K. B. 193; 82 Sol. Jo. 93, C. A. [63]

## ELEMENTARY EDUCATION

*See* EDUCATION.

## EMPLOYEES, RESPONSIBILITY FOR ACTS OF

*See* ACTIONS BY AND AGAINST LOCAL AUTHORITIES; EDUCATION.

## EMPLOYMENT OF CHILDREN

*See* INFANTS, CHILDREN AND YOUNG PERSONS.

## FACTORIES

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## ORDERS, CIRCULARS AND MEMORANDA

### FACTORIES (CLEANLINESS OF WALLS AND CEILINGS) ORDER, 1938

*S. R. & O.*, 1938, No. 487

May 5, 1938

In pursuance of the powers conferred upon me by Section 1 of the Factories Act, 1937, and of all other powers enabling me in that behalf, I hereby make the following Order.

1. Paragraph (c) of Section 1 of the Act shall not apply to the classes or descriptions of factory or parts of factories specified in the First Schedule to this Order :

Provided that the said paragraph (c) shall continue to apply—

- (i) as respects factories or parts of factories specified in Part A of the said Schedule, to workrooms in which the amount of cubic space allowed for every person employed in the room is less than 500 cubic feet ;
- (ii) as respects factories or parts of factories specified in Part B of the said Schedule, to workrooms in which the amount of cubic space allowed for every person employed in the room is less than 2,500 cubic feet ;
- (iii) to engine-houses, fitting shops, messrooms, cloakrooms, lavatories, and sanitary conveniences ; and
- (iv) to such parts of walls sides and tops of passages and stair-cases as are less than 20 feet above the floor or stair.

2. Sub-paragraph (iii) of paragraph (c) of Section 1 of the Act shall, in its application to workrooms in which lace making by machine is carried on and in which the amount of cubic space allowed for every person employed in the room is not less than 800 cubic feet, be varied and have effect as if for the words " fourteen months " in the said sub-paragraph there were substituted the words " twenty-six months " :

Provided that the inside walls and partitions and ceilings or tops of the room shall be thoroughly swept not less than ten months or more than fourteen months after they were last whitewashed or colourwashed, and particulars showing the dates of such sweeping shall be entered in or attached to the general register.

3. Sub-paragraph (iii) of paragraph (c) of Section 1 of the Act shall not apply to walls, partitions, sides, ceilings or tops which have been painted with at least two coats of a washable water paint as defined in this Order and which are repainted with at least one coat of such paint at least once in every period of three years and are washed at least once in every period of fourteen months :

Provided that the name of the paint used and the name and address of the makers of the paint, together with a certificate, in the Form prescribed in the Second Schedule to this Order, from the makers of the paint, and the dates of the original painting and of each washing and repainting, shall be entered in or attached to the general register.

4. In this Order a washable water paint means a washable water paint which when finished for use contains—

- (i) at least half its weight of solid pigment containing not less than twenty-five parts by weight of zinc sulphide as zinc white (lithopone) in each hundred parts by weight of solid pigment ; and
- (ii) at least ten parts by weight of oil and varnish to each hundred parts by weight of solid pigment.

5. If it appears to the inspector for the district that any part of a factory to which, by virtue of this Order, any of the provisions in paragraph (c) of Section 1 of the Act do not apply, or apply as varied by this Order, is not being kept in a clean state, he may, by written notice, require the occupier to whitewash or colourwash, wash, or paint or varnish the same, and in the event of the occupier failing to comply

with such requisition within two months from the date of the notice this Order shall cease to apply to such part of a factory unless and until the inspector for the district otherwise determines.

For the purposes of paragraph 5 of this Order references to the inspector for the district shall, as respects any factory or part thereof in which the provisions of paragraph (c) of Section 1 of the Act are enforceable by a district council, be construed as references to the medical officer of health of that council.

6. This Order may be cited as the Factories (Cleanliness of Walls and Ceilings) Order, 1938, and shall come into force on the 1st July, 1938.

7. As from 1st July, 1938, the Orders made by the Secretary of State on the 2nd November, 1903, the 1st July, 1911, and the 19th April, 1912, granting special exceptions from the provisions of Sub-section (3) of Section 1 of the Factory and Workshop Act, 1901, are hereby revoked.

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## FIRST SCHEDULE

### PART A

Blast furnaces.

Iron mills.

Copper mills.

Stone, slate and marble works.

Brick and tile works in which unglazed bricks or tiles are made.

Cement works.

Chemical works.

Gas works.

The following parts of factories :—

Rooms used for the storage of articles in which no process is regularly carried on.

Parts in which dense steam is continuously evolved in the process.

Parts in which pitch, tar, or like material is manufactured or is used to a substantial extent, except in a brush works.

The part of a glass factory known as the glass house.

Rooms in which graphite is manufactured or is used to a substantial extent in any process.

Parts in which coal, coke, oxide of iron, ochre, lime, or stone is crushed or ground.

Parts of walls, partitions, ceilings or tops of rooms which are at least 20 feet above the floor.

Ceilings or tops of rooms in print works, bleach works, or dye works, with the exception of finishing rooms or warehouses.

### PART B

Shipbuilding works.

Gun factories.

Engineering works.

Electric generating or transforming stations.

Frame dressing rooms of lace factories.

Foundries other than foundries in which brass casting is carried on.

Factories in which sugar is refined or manufactured.

Coach and motor body works.

Those parts of factories where unpainted or unvarnished wood is manufactured.

## SECOND SCHEDULE

It is hereby certified that the washable water paint made by  $\frac{me}{us}$  and known as.....will when finished for use in accordance with the directions given (below) (on the label attached to each tin) comply with the definition of washable water paint in the Factories (Cleanliness of Walls and Ceilings) Order, 1938.

Name and Address of Firm.....

Date.....

Signature.....

[64]

## LOCAL AUTHORITIES (TRANSFER OF ENFORCEMENT) ORDER, 1938

*S. R. & O., 1938, No. 488*

*May 5, 1938*

1. In pursuance of the powers conferred upon me by subsection (2) of Section 8 of the Factories Act, 1937, I hereby direct that the provisions of Sections 1, 2, 3, 4 and 6 of the Act, being provisions enforceable by the district council as respects factories in which mechanical power is not used, shall not be enforced by the district council in the case of any such factory in respect of which special provision is made by any of the regulations of the Secretary of State specified in the Schedule to this Order, against risk of injury to health.

2. This Order may be cited as the Local Authorities (Transfer of Enforcement) Order, 1938, and shall come into force on the 1st July, 1938.

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## SCHEDULE

The Regulations of the 19th June, 1903, for file-cutting by hand. (S.R. & O. Rev. 1904, IV, Factory and Workshop, p. 61 (1903, No. 507).)

The Regulations of the 12th December, 1905, for the sorting, willeying, washing, combing and carding of certain materials. (S. R. & O. 1905 (No. 1293) p. 90.)

The Regulations of the 20th December, 1907, for processes involving the use of horsehair from China, Siberia or Russia. (S. R. & O. 1907 (No. 984) p. 152.)

The Regulations of the 20th June, 1908, for the casting of brass. (S. R. & O. 1908 (No. 484) p. 333.)

The Regulations of the 18th December, 1908, for the vitreous enamelling of metal or glass. (S. R. & O. 1908 (No. 1258) p. 336.)

The Regulations of the 30th June, 1909, for the tinning of metal hollow-ware, iron drums, and harness furniture. (S. R. & O. 1909 (No. 720) p. 301.)

The Regulations of the 2nd January, 1913, for the manufacture and decoration of pottery. (S. R. & O. 1913 (No. 2) p. 131.)

The Indiarubber Regulations, 1922. (S. R. & O. 1922 (No. 329) p. 268.)

The Chemical Works Regulations, 1922. (S. R. & O. 1922 (No. 731) p. 255.)

The Electric Accumulator Regulations, 1925. (S. R. & O. 1925 (No. 28) p. 337.)

The Vehicle Painting Regulations, 1926. (S. R. & O. 1926 (No. 299) p. 537.)

The Chromium Plating Regulations, 1931. (S. R. & O. 1931 (No. 455) p. 424.)

The Asbestos Industry Regulations, 1931. (S. R. & O. 1931 (No. 1140) p. 410.)

The Pottery (Silicosis) Regulations, 1932. (S. R. & O. 1932 (No. 393) p. 472.) [65]

## SANITARY ACCOMMODATION REGULATIONS, 1938

*S. R. & O., 1938, No. 611*

*June 24, 1938*

In pursuance of Section 7 of the Factories Act, 1937, and of all other powers enabling me in that behalf I hereby make the following Regulations :—

1. These Regulations shall apply to all factories as defined in Section 151 of the said Act and to electrical stations to which subsection (1) of Section 103 of the Act applies.

2. In cases where females are employed there shall be at least one suitable sanitary convenience for every 25 females.

3. In cases where males are employed there shall be at least one suitable sanitary convenience (not being a convenience suitable merely as a urinal) for every 25 males :

Provided that in the case of factories where the number of males employed exceeds 100 and sufficient urinal accommodation is also provided, it shall be sufficient if there is one such convenience as aforesaid for every 25 males up to the first 100, and one for every 40 thereafter.

Provided further that in the case of a factory where the number of males employed exceeds 500, not being a factory constructed, enlarged or converted for use as a factory after the 30th June, 1938, it shall be sufficient to provide one such convenience as aforesaid for every 60 males if sufficient urinal accommodation is also provided and if the Medical Officer of Health issues a certificate (which shall be kept attached to the general register so long as it remains in force) that in his opinion the arrangements at the factory are such that this proviso may properly



be applied to the factory. Any such certificate shall be liable at any time to be revoked by the Medical Officer of Health by notice in writing.

4. In calculating the number of conveniences required by these Regulations, any odd number of persons less than 25, or 40, as the case may be, shall be reckoned as 25 or 40.

5. Every sanitary convenience shall be sufficiently ventilated, and shall not communicate with any workroom except through the open air or through an intervening ventilated space :

Provided that in the case of workrooms in use prior to 1st January, 1903, and mechanically ventilated in such manner that air cannot be drawn into the workroom through the sanitary convenience, an intervening ventilated space shall not be required.

6. Every sanitary convenience (other than a convenience suitable merely as a urinal) shall be under cover and so partitioned off as to secure privacy, and shall have a proper door and fastenings. Urinals shall be so placed or so screened as not to be visible from other parts of the factory where persons work or pass.

7. The sanitary conveniences shall be so arranged as to be conveniently accessible to the persons employed at all times while they are at the factory.

8. In cases where persons of both sexes are employed, the sanitary conveniences for each sex shall be so placed or so screened that the interior shall not be visible, even when the door of any convenience is open, from any place where persons of the other sex have to work or pass ; and, if the conveniences for one sex adjoin those for the other sex, the approaches shall be separate. The conveniences for each sex shall be indicated by a suitable notice.

9. These Regulations may be cited as the Sanitary Accommodation Regulations, 1938, and shall come into force on the 1st July, 1938, and shall be without prejudice to the requirements in subsection (1) of Section 7 of the Act that the conveniences shall be maintained and kept clean and that effective provision shall be made for lighting the conveniences.

10. As from the 1st July, 1938, the Sanitary Accommodation Order of 4th February, 1903, is hereby revoked. [66]

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## FINANCE

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### ORDERS, CIRCULARS AND MEMORANDA

#### LOCAL GOVERNMENT (ADJUSTMENT OF GRANTS) REGULATIONS, 1938

*S. R. & O., 1938, No. 1143*

*September 2, 1938*

91442

Whereas by subsection (1) of section 108 of the Local Government Act, 1929, the Minister of Health is empowered to make regulations for giving effect to the provisions of Part VI of the said Act, and in particular under paragraph (b) of that subsection is empowered to make regulations as to the manner in which the amounts of any grants payable under that Part of the said Act are to be adjusted if and so far as any such adjustment is required in consequence of any alterations or combinations of authorities or alterations of boundaries taking effect on or after the appointed day ;

And whereas by subsection (2) of section 108 of the said Act it is provided that the Local Government (Adjustments) Act, 1913, shall as from the appointed day have effect as if, in paragraph (a) of subsection (1) of section one thereof, for the reference to the Estate Duty Grant and the residue under section one of the Local Taxation (Customs and Excise) Act, 1890, mentioned in that paragraph there were substituted a reference to the grants payable under Part VI of the Local Government Act, 1929, and as if for the rules contained in Part I of the Schedule thereto there were substituted the regulations made under the said paragraph (b) of subsection (1) of section 108 of that Act ;

And whereas by regulations intituled the Local Government (Adjustments of Grants) Regulations, 1932 and 1934, provision was made under and by virtue of the said paragraph (b) of subsection (1) of section 108 of the Local Government Act, 1929, for securing the adjustment of grants upon such alterations of authorities or boundaries as are referred to in that paragraph ;

And whereas it is expedient that further provision should be made as hereinafter mentioned :

Now therefore the Minister of Health in the exercise of the powers conferred on him under or by virtue of the said paragraph (b) of sub-

section (1) of section 108 of the Local Government Act, 1929, and of all other powers enabling him in that behalf, hereby makes the following regulations :—

1.—(1) These regulations may be cited as the Local Government (Adjustment of Grants) Regulations, 1938.

(2) The Local Government (Adjustment of Grants) Regulations, 1932 and 1934, are hereby repealed, save in so far as they apply to an alteration which took effect before the 1st day of April, 1937.

2.—(1) In these regulations, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them :—

“ the Act of 1929 ” means the Local Government Act, 1929 ;

“ the Act of 1937 ” means the Local Government (Financial Provisions) Act, 1937 ;

“ alteration ” means any alteration or combination of authorities or alteration of boundaries (including the formation of a new county district and the conversion of a rural district into or so as too form part of an urban district or of an urban district into or so as to form part of a rural district) taking effect on or after the 1st day of April, 1937 ;

“ date of alteration ” means in relation to any area the day on which an alteration affecting that area takes effect ;

“ altered county ” “ altered county borough ” and “ altered district ” mean respectively in relation to any county, county borough or county district affected by an alteration that county, county borough or county district (including a newly constituted county district) as constituted immediately after the date of alteration ;

“ diminished district ” means, in relation to any alteration, any county district diminished or abolished by that alteration ;

“ rating area ” has the same meaning as in the Rating and Valuation Act, 1925 ;

“ transferred area ” means any area (being a part or the whole of a rating area) which is added to or taken from a rating area or becomes a new rating area consequent upon an alteration and the expression “ transferred ” shall be construed accordingly ;

“ capitation sum ” means in relation to any county district the sum which under section 91 of the Act of 1929 is to be calculated on the basis of the estimated population of the district ;

“ adjusting amount ” means in relation to any separately rated area the amount which in any year in accordance with the provisions of subsection (1) of section 94 of the Act of 1929 falls for that year to be added to or but for the proviso to subparagraph (ii) of paragraph (c) of that subsection deducted from the capitation sum of the council of a county district in respect of that area ;

“ compensation ” means any sum payable by the Minister to a rural district council under paragraph (a) of subsection (1) of section 92 of the Act of 1929 together with any minimum amount payable by the County Council under subparagraph (b) of that subsection as amended by section 5 of the Act of 1937 ;

“ rateable value ” means rateable value at the date of alteration according to the valuation lists then in force :

Provided that where all the councils affected by an alteration notify the Minister that they have agreed to that effect "rateable value" shall for the purpose of the adjustments upon that alteration be taken to mean rateable value at the date of the alteration as shown on that day in the valuation lists then in force.

(2) The Interpretation Act, 1889, shall apply to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

3. Where an alteration affects the boundary of a county or county borough the following provisions shall have effect :—

- (1) The losses on account of rates and grants of each county or county borough affected shall be increased or reduced by such amounts as the Minister may determine having regard to the losses on account of rates and grants respectively estimated by him to be attributable in respect of the standard year to the several areas added to or taken away from the counties or county boroughs affected so however that the aggregate amounts of such losses on account of rates and grants respectively for all the counties and county boroughs affected shall remain unaltered.
- (2) The losses on account of rates and grants of each county and county borough affected as increased or reduced in accordance with paragraph (1) of this regulation shall (so far as calculations of grants are under the Act of 1929 to be based on losses on account of rates and grants) be used in the calculations of grants payable in any fixed grant period commencing on or after the date of alteration, and shall be in substitution for the losses on account of rates and grants of that county or county borough as at any time previously determined by the Minister.
- (3) For the purpose of the calculation of any Additional Exchequer Grant payable in any fixed grant period commencing on or after the date of alteration in respect of an altered county or county borough the weighted population for the first fixed grant period of that county or county borough as altered shall be deemed to be a number which bears the same proportion to the weighted population as estimated by the Minister of that altered county or county borough for the fixed grant period current at the date of alteration as the weighted population for the first fixed grant period of that county or county borough as unaltered bears to what the Minister estimates would have been its weighted population in the fixed grant period current at the date of alteration if the alteration had not taken place.
- (4) Subject as hereinafter provided in the case of any alteration taking effect on a date other than the first day of any fixed grant period the county or county borough apportionment of each county and county borough and the Additional Exchequer Grant (if any) of each county council and county borough council affected by the alteration shall until the termination of the fixed grant period current at the date of alteration only be increased or reduced by such amounts as

the Minister may determine having regard to the under-mentioned factors viz. :—

- (a) The amounts calculated in accordance with paragraph (1) of this regulation which the Minister determines to be the losses on account of rates and grants of each of the counties or county boroughs affected ;
- (b) The weighted population as estimated by the Minister for the fixed grant period in question of each of the altered counties or county boroughs ; and
- (c) The weighted population for the first fixed grant period of each of the altered counties or county boroughs as estimated by the Minister in accordance with paragraph (3) of this regulation :

Provided that if the aggregate of the amounts of the following items viz. :—

- (i) the county and county borough apportionments as so calculated solely by reference to these factors of the several counties and county boroughs concerned ; and
- (ii) the Additional Exchequer Grants as so calculated of the councils of those counties and county boroughs ;

exceeds or is less than the aggregate of the amounts of the following items viz. :—

- (iii) the county and county borough apportionments previously determined for those counties and boroughs ; and
- (iv) the Additional Exchequer Grants that would have been payable to the councils of those counties and county boroughs if the alteration had not been effected ;

then each apportionment and grant included in the first-mentioned aggregate as so calculated shall if the first-mentioned aggregate exceeds the second-mentioned aggregate be reduced or if the first-mentioned aggregate is less than the second-mentioned aggregate be increased by a sum bearing the same proportion to such apportionment or grant as the difference between such aggregates bears to the first-mentioned aggregate :

Provided also that where all the county councils and county borough councils affected by an alteration notify the Minister that they are in agreement that no adjustment under this paragraph is necessary the Minister may if he thinks fit dispense with any such adjustment.

4. Where an alteration affects a county district the following provisions shall as from the date of alteration have effect with regard to the sum to be set aside out of the county apportionment and with regard to the General Exchequer Grant payable to the council of the county district :—

- (1) The capitation sum in respect of the district shall be recalculated (or in the case of a newly formed district calculated) as if



the date of alteration were the first day of April in the last year of the preceding fixed grant period.

- (2) For the purpose of this regulation each separately rated area transferred shall be deemed to be a separately rated area in the rating area to which it is transferred and where a separately rated area is divided so that part thereof is transferred and part thereof is not transferred or where part of a separately rated area is transferred to one rating area and another part to another rating area then each such part shall be deemed to be a separately rated area and an amount bearing the same proportion to the adjusting amount of the undivided separately rated area as the rateable value of such part bears to the rateable value of the undivided separately rated area shall be deemed to be the adjusting amount of such part :

Provided that where the adjusting amount of any separately rated area in a diminished district was in the rating period immediately preceding the date of alteration applied by the council of the district otherwise than wholly to that area the Minister may make the adjustment provided for in this regulation in such manner as shall take account of such application.

- (3) The amount which would under paragraphs (b) and (c) of subsection (1) of section 94 of the Act of 1929 fall to be added to or (but for the proviso to subparagraph (ii) of paragraph (c) of that subsection) deducted from the capitation sum in respect of any altered district shall be an amount ascertained by taking into account the adjusting amounts of all the separately rated areas included in the altered district and the sum if any payable under the said proviso and the addition or deduction to be made under the said paragraphs after effect has been given to the said proviso shall be calculated accordingly.

- (4) Any compensation payable in respect of a transferred area (or any part thereof) shall—

(i) in a case where the transferred area (or part) ceases to form part of a rural district cease to be payable as from the date of alteration ; and

(ii) in any other case so far as payable in respect of the year in which the alteration takes effect and of any subsequent year within the then current fixed grant period on account of any area continuing to form part of a rural district be payable as from the date of alteration to the council of the rural district of which the transferred area forms part and be applicable as compensation payable to the council of that rural district and the annual amount so applicable shall be taken into account in calculating the compensation payable to that rural district council in subsequent fixed grant periods :

Provided that in the case of a separately rated area which is not wholly transferred from a rural district any

compensation payable in respect of that area shall be apportioned between the various parts of that area in proportion to the rateable values of those parts and the amount so apportioned to any part shall for the purposes of these regulations be deemed (in any case where that part continues to form part of a rural district) to be the compensation payable in respect of that part :

Provided also that where the compensation in respect of any separately rated area in a diminished rural district was in the rating period immediately preceding the date of alteration wholly or partially applied by the council of the district other than to that area the Minister may make the adjustment provided for in this regulation in such manner as shall take account of such application.

- (5) Where the council of a county district affected by an alteration is a council carrying out services under section 204 of the Public Health Act, 1936, and the General Exchequer Grant of that council is increased in accordance with a scheme made under section 93 of the Act of 1929 the Minister after consultation with the councils of the county and of the county district may make such modifications of that scheme as he considers necessary.

5. Where the Minister under section 200 of the Public Health Act, 1936, has provided from some date after the commencement of any fixed grant period for the transfer of services under section 204 of that Act, from a county council to the council of a county district the sum to be set aside out of the county apportionment in respect of such district shall from the date of such transfer to the end of that fixed grant period be increased by such amount as the Minister may determine, regard being had to the expenditure upon such services which will be defrayed by the council of the district :

Provided always that the effect of any such changes shall not be taken into account for the purpose of making any calculation or adjustment under section 94 of the Act of 1929.

6. These regulations shall not apply where an alteration affects the boundary of the county of London or of any area within that county or affects the London County Council the Common Council of the City of London or the council of any metropolitan borough or includes the constitution of a new county or county borough. [67]

\* \* \* \* \*

## AUDIT STAMP DUTY ORDER, 1938

*S. R. & O., 1938, No. 793*

*August 11, 1938*

Whereas by sub-section (2) of Section 221 of the Local Government Act, 1933, it is provided that stamp duty shall be charged on authorities whose accounts are subject to audit by a district auditor in respect of the audit of their accounts according to a scale to be fixed from time to

time by the Treasury, after consultation with the Minister of Health and with such associations of local authorities as appear to the Minister to be concerned :

Now therefore the Lords Commissioners of His Majesty's Treasury in pursuance of the said sub-section and after such consultation as is therein mentioned, hereby make the following Order :—

1.—(1) This Order may be cited as the Audit Stamp Duty Order, 1938.

(2) The Interpretation Act, 1889, applies to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

2. The stamp duty charged on an authority by virtue of the above-mentioned sub-section, in respect of the audit of their accounts by district auditors, shall be calculated according to the scale set out in the Schedule hereto.

3. For the purposes of the said Schedule the amount on which stamp duty is payable by an authority shall be determined as follows :—

(1) From the aggregate of the total income and expenditure included in the financial statement of the authority there shall be deducted sums equivalent to—

(a) amount of rates transferred by Councils of County Boroughs and Boroughs to accounts not subject to district audit ;

(b) twice the amounts payable in pursuance of precepts ;

(c) receipts from loans ;

(d) loans repaid from money borrowed or to be borrowed ;

(e) capital advances to other authorities by way of loan ;

(f) grants from Government Departments ;

(g) expenditure re-chargeable to, and income receivable from, the Minister of Transport or authorities in respect of roads ;

(h) income from the Central Electricity Board in respect of generation of current ;

(i) receipts from Motor Taxation Licences and payments thereof to the Exchequer.

(2) The aggregate of net income and net expenditure remaining after the said deductions have been made shall be the amount on which stamp duty is payable by the authority.

4.—(1) This Order shall apply to the stamp duty chargeable in respect of the audit of any of the accounts of an authority for a financial year or period ended after the 31st March 1937 :

Provided that the provisions of the Audit Stamp Duty (Local Authorities) Order, 1921, shall apply in any case in which the financial statement of an authority for such period is certified by the district auditor in accordance with section 222 of the Local Government Act, 1933, before the first day of September 1938.

(2) Subject to the provisions of this Article the Audit Stamp Duty (Local Authorities) Order, 1921, is hereby rescinded.

## SCHEDULE

## SCALE OF STAMP DUTIES PAYABLE BY AUTHORITIES

Where the amount on which stamp duty is payable				The sum shall be
Does not exceed	£25	...	...	5s.
Exceeds	£25 but does not exceed	£50	...	10s.
"	£50	"	£100	£1
"	£100	"	£250	£2
"	£250	"	£500	£3
"	£500	"	£1,000	£5
"	£1,000	"	£2,500	£8
"	£2,500	"	£5,000	£12
"	£5,000	"	£10,000	£20
"	£10,000	"	£25,000	£35
"	£25,000	"	£50,000	£50
"	£50,000	"	£100,000	£75
"	£100,000	"	£150,000	£100
"	£150,000	"	£200,000	£125
"	£200,000	"	£250,000	£150
"	£250,000	"	£300,000	£175
"	£300,000	"	£350,000	£200
"	£350,000	"	£400,000	£220
"	£400,000	"	£450,000	£240
"	£450,000	"	£500,000	£260
"	£500,000	"	£550,000	£280
"	£550,000	"	£600,000	£300
"	£600,000	"	£700,000	£325
"	£700,000	"	£800,000	£350
"	£800,000	"	£900,000	£375
"	£900,000	"	£1,000,000	£400
"	£1,000,000	...	...	£400 plus £20 for each additional £100,000 or part thereof.

[68]

\* \* \* \* \*

FINANCIAL STATEMENTS (DISTRICT AUDIT)  
REGULATIONS, 1938

S. R. &amp; O., 1938, No. 794

August 11, 1938

98,245

The Minister of Health in pursuance of his powers under section 222 of the Local Government Act, 1933, and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

1.—(1) These Regulations may be cited as the Financial Statements (District Audit) Regulations, 1938.

(2) The Interpretation Act, 1889, applies to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

(3) In these Regulations, unless the context otherwise requires—

“the Act” means the Local Government Act, 1933;

“the Minister” means the Minister of Health.

## PART I

2. This part of these Regulations shall apply in relation to the financial statement required by the Act to be prepared and submitted in duplicate to the district auditor by—

- (a) The Council of every administrative county and the Council of the Isles of Scilly ;
- (b) The Mayor, Aldermen and Burgesses of every borough whose accounts or any part thereof are for the time being required to be audited by a district auditor ;
- (c) The Council of every metropolitan borough ;
- (d) The Urban District Council of every urban district (not being a borough) ;
- (e) The Rural District Council of every rural district ;
- (f) A catchment board constituted under the Land Drainage Act, 1930 ;
- (g) A drainage board, not being a catchment board, whose accounts are for the time being subject to audit by a district auditor ;
- (h) The visiting committee of a mental hospital belonging wholly or in part to any county council ;
- (i) The Lancashire Mental Hospitals Board ;
- (j) The Staffordshire Mental Hospitals Board ;
- (k) The West Riding of Yorkshire Mental Hospitals Board ;
- (l) A governing body to whom in pursuance of a Scheme made under the Welsh Intermediate Education Act, 1889, payments are made out of any general fund administered by a local education authority ;
- (m) A joint superannuation committee constituted under the Local Government and other Officers' Superannuation Act, 1922, or the Local Government Superannuation Act, 1937, whose accounts are for the time being required to be audited by a district auditor ;
- (n) A joint vagrancy committee whose accounts are for the time being required to be audited by a district auditor.

3. The financial statement shall be in the Form set out in the First Schedule to these Regulations and shall contain the particulars therein specified or referred to so far as they are applicable and except so far as the Minister may assent to a departure from such Form.

4. The certificate of the district auditor to be appended to each duplicate financial statement shall be in the Form set forth at the foot of the said statement.

5. Where a part only of the accounts of the Mayor, Aldermen and Burgesses of a borough is required to be audited by a district auditor, the financial statement shall relate only to that part of the accounts.

## PART II

6. This part of these Regulations shall apply in relation to the financial statement required by the Act to be prepared and submitted in duplicate to the district auditor by the authorities specified in the



orders set out in the first column of Part I of the Second Schedule to these Regulations.

7. The financial statement shall be in the Form and contain the particulars required by the said orders and regulations, subject to the deletion of those parts of the Form and the form of certificate of the district auditor as set out in the second column of Part I of the Second Schedule to these Regulations and the substitution therefor in each case of the particulars and form of certificate of the district auditor specified in Part II of the Second Schedule to these Regulations.

#### GENERAL

8.—(1) These Regulations shall apply in relation to a financial statement required to be submitted to the district auditor by an authority herein mentioned by virtue of section 222 of the Act for a financial year or other period ended after the 31st March, 1937, other than a financial statement for any such period certified by the district auditor in accordance with the said section before the 1st day of September, 1938.

(2) Subject to the provisions of this Article the orders and regulations set out in the Third Schedule hereto are hereby rescinded.

9. Article 4 of the Audit Regulations, 1934 (S. R. & O. 1934 No. 1188), is hereby rescinded in so far as the form of financial statement of the accounts of an authority and the certificate of the district auditor are prescribed by these Regulations.

---

#### FIRST SCHEDULE

\*

\* Insert name  
of Authority.

#### STATUTORY FINANCIAL STATEMENT

For the                      ended the                      day of                      19

Name of Responsible Accounting Officer

Office Address

#### INSTRUCTIONS TO BE OBSERVED IN THE PREPARATION OF THE STATUTORY FINANCIAL STATEMENT

1. For the purpose of ascertaining the figures to be entered in the Financial Statement, the officer responsible for the Statement shall make up from the Ledger a Schedule setting out the total amount credited and debited to each account, but so that no one item is included more than once in such Schedule, and shall include all the Expenditure under each heading without deduction of any Income connected therewith.

2. The Schedule shall be submitted to the District Auditor at the Audit and preserved for future reference.

## STATUTORY FINANCIAL STATEMENT OF THE

for the

ended the

day of

19 .

INCOME.			EXPENDITURE.		
Revenue Funds or Accounts (specifying them)—			Revenue Funds or Accounts (specifying them)—		
£	s.	d.	£	s.	d.
TOTAL REVENUE CREDITS ...			TOTAL REVENUE CHARGES ...		
Capital and Loan accounts ...			Capital and Loan Accounts ...		
Sinking Fund Accounts (including accounts of like nature) ...			Sinking Fund Accounts (including accounts of like nature) ...		
Reserve and other Special Fund Accounts ...			Reserve and other Special Fund Accounts ...		
TOTAL INCOME including Contributions from other Funds of the Authority ...			TOTAL EXPENDITURE including Contributions to other Funds of the Authority ...		
Deduct Contributions included above ...			Deduct Contributions included above ...		
TOTAL INCOME (not including such Contributions) ...			TOTAL EXPENDITURE (not including such Contributions) ...		
Balances in hand brought forward ...			Balances overspent brought forward ...		
Balances overspent at end of period ...			Balances in hand at end of period ...		
£			£		
TOTAL INCOME as at A above ...			TOTAL INCOME as at A above ...		
TOTAL EXPENDITURE as at B above ...			TOTAL EXPENDITURE as at B above ...		
TOTAL INCOME and EXPENDITURE ...			TOTAL INCOME and EXPENDITURE ...		

DEDUCT (in so far as they are included in the preceding amount)—  
 (1) Amount of rates transferred by Councils of County Boroughs and Boroughs to accounts not subject to District Audit ... ..  
 (2) Twice the amounts payable in pursuance of precepts namely:—

- (3) Receipts from loans ... ..  
 (4) Loans repaid from money borrowed or to be borrowed ... ..  
 (5) Capital advances to other authorities by way of loan ... ..  
 (6) Grants from Government Departments ... ..  
 (7) Expenditure rechargeable to, and income receivable from, the Minister of Transport or authorities in respect of roads ... ..  
 (8) Income from the Central Electricity Board in respect of generation of current... ..  
 (9) Receipts from Motor Taxation Licences and payments thereof to the Exchequer ... ..

AGGREGATE OF NET INCOME and NET EXPENDITURE on which Audit Stamp Duty is payable

£	s.	d.
...	...	...

.....Responsible Accounting Officer.

day of

19 .

I HEREBY CERTIFY that I have compared the entries in this Financial Statement with the accounts of the Local Authority relating thereto, that the Regulations with respect to this Statement have been duly complied with and that the expenditure of the said Authority during the year ended the day of 19 included in this Statement and allowed by me at Audit is \*

I HEREBY FURTHER CERTIFY that I have ascertained by Audit the correctness of this Statement and that the aggregate of net income and net expenditure of the said Authority on which stamp duty is payable is \*

As witness my hand this

day of

19

.....STAMP .....District Auditor.

\* The amount to be inserted in words at length.

## SECOND SCHEDULE

## PART I

Column 1. Order.	Column 2. Extent of Repeal.
Order of Local Government Board dated 20th April 1900 in respect of Parish Councils.	Part IV of the Schedule except that part headed "Memorandum" and the lines for the signature and dating of the Memorandum.
Order of Local Government Board dated 20th March 1911 in respect of Parish Meetings.	The Summary to the Schedule except that part headed "Memorandum" and the lines for the signature and dating of the Memorandum.
Order of Local Government Board dated 23rd December 1892 as to Joint Hospital Boards.	The concluding part of Form 3 in the Schedule commencing with the words "TOTAL EXPENDITURE as shown above" where they first appear.
Order of Local Government Board dated 23rd December 1892 as to Joint Cemetery Boards.	The concluding part of Form 3 in the Schedule commencing with the words "TOTAL EXPENDITURE as shown above" where they first appear.
Order of Local Government Board dated 23rd December 1892 as to Joint Sewerage or Drainage Boards.	The concluding part of Form 3 in the Schedule commencing with the words "TOTAL EXPENDITURE as shown above" where they first appear.
Order of Local Government Board dated 23rd December 1892 as to Joint Water Boards or Committees.	The concluding part of Form 3 in the Schedule commencing with the words "TOTAL EXPENDITURE as shown above" where they first appear.
Order of Local Government Board dated 26th January 1893 as to Sea Fisheries Districts.	The concluding part of the Schedule commencing with the words "TOTAL EXPENDITURE as shown above".
Order of Local Government Board dated 28th February 1896 as to Port Sanitary Authorities.	The concluding part of Form No. 3 in the Schedule commencing with the words "Summary of the Receipts and Payments shown in Parts I and II".
Order of Local Government Board dated 27th April 1900 in respect of Joint Committees appointed for purposes other than those of the Burial Acts.	Part III of the Schedule.
Order of Local Government Board dated 29th April 1902 as to Joint Committees appointed under section 53 of the Local Government Act 1894 for the purposes of the Burial Acts.	Part IV of the Schedule.
Order of Local Government Board dated 2nd June 1903 as to Isolation Hospital Committees.	Part IV of the Schedule.
Order of Local Government Board dated 3rd May 1909 as to Joint Education Committees and Joint Bodies established under the Education Acts 1870 to 1907.	Part IV of the Schedule.
The Assessment Committees (Financial Statement and Audit of Accounts) Order 1927 (S. R. & O. 1927, No. 308).	Part II of the Schedule.

## PART II

	£	s.	d.
Total Income ... ..			
Total Expenditure ... ..			
Total Income and Expenditure ... ..			
Deductions, if any, in accordance with the Audit Stamp Duty Order, 1938 (specifying them) :—			
Aggregate of Net Income and Net Expenditure on which Audit Stamp Duty is payable ... ..			

.....Responsible Accounting Officer.

day of

19

I HEREBY CERTIFY that I have compared the entries in this Financial Statement with the accounts of the Local Authority relating thereto, that the Regulations with respect to this Statement have been duly complied with and that the expenditure of the said Authority during the year ended the day of 19 included in this Statement and allowed by me at Audit is \*

I HEREBY FURTHER CERTIFY that I have ascertained by Audit the correctness of this Statement and that the aggregate of net income and net expenditure of the said Authority on which stamp duty is payable is \*

AS WITNESS my hand this day of 19

.....STAMP.....District Auditor.

\* The amount to be inserted in words at length.

## THIRD SCHEDULE

The Financial Statements Order, 1921. (S. R. & O. 1921 (No. 1902) p. 99).

The Financial Statements (Mental Hospitals) Order, 1931. (S. R. & O. 1931 (No. 746) p. 674).

The Catchment Boards (Financial Statement and Audit of Accounts) Order, 1931. (S. R. & O. 1931 (No. 896) p. 573).

The Drainage Boards (Financial Statements) Regulations, 1935. (S. R. & O. 1935 (No. 891) p. 732).

The Financial Statements (Welsh Intermediate Education) Order, 1929. (S. R. & O. 1929 (No. 110) p. 421).

\* \* \* \* \*

[69]

## RATES OF INTEREST ON LOCAL LOANS

*Treasury Minute*

*December 29, 1938*

My Lords read Section 1 of the Public Works Loans Act 1897 (60 & 61 Vict. c. 51) which empowers the Treasury from time to time to fix the rates of interest at which loans may be made out of the Local Loans Fund on the security of Local rates, and provides that the



Treasury, in fixing the rates, shall have regard to the duration of the loans, and also that the rates shall be such as, in the opinion of the Treasury, are sufficient to enable the loans to be made without loss to the Fund.

They also read Section 4 of the Public Works Loans Act 1918 (8 & 9 Geo. 5, c. 27), by which it is declared that the power of the Treasury under Section 1 of the Public Works Loans Act 1897, as amended by Section 4 of the Public Works Loans Act 1917 (7 & 8 Geo. 5, c. 32) to fix rates of interest on loans made out of the Local Loans Fund otherwise than on the security of local rates includes (subject always to the provisions of the said Sections) a power to fix rates of interest differing from the rates fixed for loans made out of that fund on the security of local rates, and a power to fix different rates of interest in respect of different loans and that in fixing the rate of interest the Treasury may take into account the nature and value of the security for the loan.

They further read Section 92 of the Housing Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 51) and Section 73 of the Housing (Scotland) Act 1925 (15 & 16 Geo. 5, c. 15) as amended by Sections 25 and 28 of the Housing (Scotland) Act, 1935 (25 & 26 Geo. 5, c. 41) which provide that loans may be granted to companies, societies, associations and persons as defined in those Sections in connection with the provision of houses for the working classes.

The rates of interest were last revised by the Treasury Minute of the 4th August, 1937, when the minimum rate was fixed at  $3\frac{3}{8}$  per cent. In view, however, of present monetary conditions the lowest rate now consistent with the conditions laid down by the Acts cited in the first and second paragraphs above is  $3\frac{3}{4}$  per cent.

Accordingly, the Chancellor of the Exchequer recommends that the minimum rate for local loans be raised from  $3\frac{3}{8}$  per cent. to  $3\frac{3}{4}$  per cent., and that all other rates for local loans, whether secured on local rates or otherwise, be raised by  $\frac{1}{8}$  per cent.

My Lords approve, and accordingly the following scales will come into operation as from the 2nd January, 1939, and will apply to all loans granted out of the Local Loans Fund on or after that date.

## I

### *Housing Loans*

	Rate of Interest.
(1) Loans to Local Authorities secured on Local Rates for any purpose of the Housing Acts and the Housing (Rural Workers) Acts, 1926 and 1931.	
Any period - - - - -	$3\frac{3}{4}$ per cent.
(2) Loans to Housing Associations as defined by the Housing Act, 1936, and the Housing (Scotland) Act, 1935.	
Not exceeding 30 years - - - - -	$3\frac{3}{4}$ per cent.
Not exceeding 50 years - - - - -	4 per cent.
(3) To Companies and Private Persons limiting their profits to the rate for the time being prescribed.	
Not exceeding 30 years - - - - -	$3\frac{3}{4}$ per cent.
Not exceeding 40 years - - - - -	4 per cent.

					Rate of Interest.
(4) To Companies and Private Persons not limiting their profits as aforesaid.					
Not exceeding 30 years	-	-	-	-	4½ per cent.
Not exceeding 40 years	-	-	-	-	4½ per cent.

## II

*Other Loans*

- (1) Loans to Local Authorities for any purposes of the Small Holdings and Allotments Acts 1908 to 1926 and the Allotments Acts 1908 to 1925.
- |            |   |   |   |   |              |
|------------|---|---|---|---|--------------|
| Any period | - | - | - | - | 3¾ per cent. |
|------------|---|---|---|---|--------------|
- (2) Other Loans secured on Local Rates :—
- |                        |   |   |   |   |              |
|------------------------|---|---|---|---|--------------|
| Not exceeding 30 years | - | - | - | - | 3¾ per cent. |
| Not exceeding 50 years | - | - | - | - | 4 per cent.  |
- (3) Loans not secured on Local Rates :—
- (a) Loans under the Harbours and Passing Tolls, etc. Act, 1861 :—
- (i) With collateral security :—
- |                        |   |   |   |   |              |
|------------------------|---|---|---|---|--------------|
| Not exceeding 30 years | - | - | - | - | 3¾ per cent. |
| Not exceeding 50 years | - | - | - | - | 4 per cent.  |
- (ii) Without collateral security :—
- |                        |   |   |   |   |              |
|------------------------|---|---|---|---|--------------|
| Not exceeding 30 years | - | - | - | - | 4½ per cent. |
| Not exceeding 50 years | - | - | - | - | 4½ per cent. |
- (b) Other loans not secured on Local Rates (except loans to Territorial Associations, which, under Section 6 of the Public Works Loans Act, 1908, bear interest at the rate prescribed for loans on the Security of Local Rates) :—
- |                        |   |   |   |   |              |
|------------------------|---|---|---|---|--------------|
| Not exceeding 30 years | - | - | - | - | 4½ per cent. |
| Not exceeding 50 years | - | - | - | - | 4½ per cent. |

[70]

## CASES

*Urban District Council—Whether Councillors Guilty of Misconduct in Passing Resolution—Previous Warning by Clerk to Council that Purpose of Resolution Unlawful—Whether Loss or Deficiency Caused by Councillors' Misconduct—Liability to be Surcharged—Local Government Act, 1933 (c. 51), s. 228 (1) (d).*

By a resolution dated Sept. 9, 1936, an urban district council resolved to make a contribution of £30 out of the rate fund in support of a march of unemployed persons to London to protest against the unemployment assistance regulations. The resolution was passed, although the clerk to the council advised that such a payment would be illegal and that the members of the council responsible therefor would be liable to be surcharged. On Sept. 23, the present appellant obtained an interim injunction in the High Court restraining the council

from making the proposed contribution from the rate fund. On Sept. 28, the matter was further considered at a special meeting of the council when counsel's opinion was submitted to the meeting and a resolution was passed rescinding the minute of Sept. 9 authorising the contribution of £30, and agreeing to abide by the injunction. The council also authorised the clerk to instruct counsel to appear in court and consent to the injunction being made perpetual, but to object to the payment by the council of the costs incurred. The court, however, ordered the council to pay the costs of the proceedings which had been brought about by the council's resolution of Sept. 9. The amount of the taxed costs was £65 5s. 8d., and in addition the costs of the London agents of the clerk to the council amounted to £19 16s. 4d. The bills of costs were presented to the next council meeting on Dec. 9, when it was resolved that the total costs of £85 2s. should be paid. Later, the district auditor was asked to surcharge that amount upon the members of the council responsible for the resolution of Sept. 9, and also on the members of the council who on Dec. 9 authorised payment of the costs. After consideration, the auditor found that the members of the council who passed the resolution of Dec. 9 had acted legally and properly, as the said costs consisted of debts legally and properly due by the council, and that the action of the members who voted in support of the resolution of Sept. 9 was not an act which called for surcharge under the Local Government Act, 1933, s. 228 (1) (d), which imposed a duty on the district auditor "to surcharge the amount of any loss or deficiency upon any person by whose negligence or misconduct the loss or deficiency has been incurred." Thereupon this appeal was brought, and it was now contended that the members of the council who voted for the resolution of Sept. 9 were persons guilty of negligence or misconduct, and that the said sum of £85 2s. paid by the council was a loss or deficiency incurred by reason of that negligence or misconduct :—

*Held*: as the members of the council who passed the resolution of Sept. 9 did so notwithstanding the advice of the clerk to the council that the proposed contribution was illegal, and without disputing the correctness of such advice, they were guilty of misconduct within the meaning of the Local Government Act, 1933, s. 228 (1) (d), and, as the costs incurred amounted to a loss or deficiency caused by such misconduct, the said sum of £85 2s. should be surcharged upon those members who voted for the resolution of Sept. 9.—*DAVIES v. COWPERTHWAITTE*, [1938] 2 All E. R. 685; 159 L. T. 43; 36 L. G. R. 459. [71]

*Omnibus Board Constituted by Local Statute—Whether Board a Local Authority—Provisions Relating to Accounts of Local Authority Incorporated in Local Statute—Repeal of Provisions of 1894 Act—Effect on Local Act—Whether Elector Entitled to Inspection of Auditor's Report on Accounts of Board—Interpretation of Statutes—Local Government Act, 1894 (c. 73), s. 58—Local Government Act, 1933 (c. 51), s. 283 (4).*

A board to provide and run omnibuses was constituted by a local Act which incorporated the enactments relating to audit of accounts and the incidental and consequential effects of audit. At the time the local Act was passed these provisions were contained in the Local Government Act, 1894, s. 58. Later, the 1894 Act was repealed, and in 1933 a Local Government Act was passed, of which s. 283 (4) provided that the accounts of a local authority, and the auditor's report thereon, should be open to the inspection of any local government elector.

Applicant, as a local government elector, contended that he was entitled to such inspection, on the ground that the repeal of the 1894 Act did not affect the provision of the 1894 Act incorporated in the local Act, which had not been repealed, and that the provisions of s. 283 (4) of the Act of 1933 were now incorporated in the local Act :—

*Held* : (i) applicant was entitled to the inspection claimed ;

(ii) in the circumstances, whether or not the board was a local authority, the inspection of the accounts of the board was governed by the Act of 1933, which was now the enactment relating to the audit of accounts and the incidental and consequential effects of audit.—*R. v. WEST MONMOUTHSHIRE OMNIBUS BOARD, Ex p. PRICE*, [1938] 1 All E. R. 220 ; 36 L. G. R. 156. [72]

## FINANCIAL ADJUSTMENTS

*See AREAS OF LOCAL GOVERNMENT ; FINANCE.*

## FINANCIAL STATEMENT

*See FINANCE.*

## FIRE PROTECTION

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## STATUTES

### THE FIRE BRIGADES ACT, 1938

(1 & 2 Geo. 6, c. 72.)

### INTRODUCTORY NOTE

THIS Act repeals the rather limited statutory provisions dealing with the establishment of fire brigades by local authorities, provides for the establishment of fire brigades throughout the country on a more uniform

plan, and prescribes in outline the standards of efficiency and organisation which are to be attained. The provision of an efficient fire service is a duty imposed on local authorities. Charges for the services of a fire brigade within the district are abolished, and charges for such services outside the district will become illegal in July, 1940. The Act contains provisions for co-ordinating the fire services of two or more authorities, and extends the use of air-raid equipment to the fire service. A Central Advisory Council for Fire Services is established, and the opportunity has been taken to amend the definition of "professional fireman" in the Fire Brigade Pensions Acts.

### ARRANGEMENT OF SECTIONS

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*An Act to make further provision for fire services in Great Britain and for purposes connected therewith.* [73] [29th July, 1938.]

*Fire Authorities.*

**1. Provision of fire services.**—(1) The council of every county borough and of every county district (hereinafter referred to as a "fire authority") shall make provision for the extinction of fires and the protection of life and property in case of fire by securing—

- (a) the services for their borough or district of such a fire brigade and of such fire engines, appliances and equipment as may be necessary to meet efficiently all normal requirements ;
- (b) the efficient training of the members of the fire brigade ;
- (c) efficient arrangements for enabling persons to call the fire brigade in case of fire, for summoning the members of the fire brigade and for manning the fire engines ; and
- (d) efficient arrangements for obtaining, by inspection or otherwise, information required for the purposes of the fire brigade with respect to the character of the buildings and other property in the borough or district, the available water supplies and the means of access thereto, and other material local circumstances,

and the services secured for a borough or district under this subsection are in this Act referred to as "local fire services." [74]

(2) The Secretary of State may by order prescribe standards of efficiency with respect to any of the matters mentioned in the foregoing subsection, and the standards may vary according to the requirements of, and facilities available in, different kinds of locality, and any fire authority whose local fire services are of a standard so prescribed shall, as respects the matter for which the standard is prescribed, be deemed to have complied with the provisions of the foregoing subsection. [75]

(3) A fire authority may secure local fire services for their borough or district by themselves providing and maintaining, either wholly or in part, such fire services or by entering into arrangements for the provision and maintenance, either wholly or in part, of such fire services by other fire authorities or persons. [76]

(4) An officer of a fire authority, authorised in writing by the authority, shall, for the purpose of carrying out such arrangements as are mentioned in paragraph (d) of subsection (1) of this section, have the like powers of entering premises as are conferred upon authorised officers of councils by section two hundred and eighty-seven of the Public Health Act, 1936, and accordingly that section shall have effect as if the references to an authorised officer of a council included references to an officer of a fire authority authorised as aforesaid, and as if among the purposes specified in subsection (1) of that section there were included the aforesaid purpose. [77]

For s. 287 of P.H.A. 1936, see 29 Halsbury's Statutes 507. Under that section "authorised officers," on producing documentary evidence of their authority, may enter any premises, at all reasonable hours, for the purposes of the section.

(5) Every fire authority shall, so far as practicable, enter into arrangements with other fire authorities and persons who maintain fire brigades to secure the provision of assistance by those authorities and persons for the purpose of dealing with fires occurring in the borough or district of the first named authority which cannot adequately be dealt with by the local fire services, and the Secretary of State may by order prescribe scales of payments to be made, unless otherwise agreed, by the authority receiving the assistance provided in accordance with such arrangements. [78]

Local authorities have powers to combine for the better exercise of their functions; see P.H.A. 1875, s. 285 (13 Halsbury's Statutes 744), L.G.A. 1894, s. 57 (10 Halsbury's Statutes 813), L.G.A. 1933, ss. 91—94 (26 Halsbury's Statutes 365—7), and P.H.A. 1936, ss. 272, 274 (29 Halsbury's Statutes 498). The powers of this section are an extension of the specific powers of P.H.A.A. 1907, s. 90 (13 Halsbury's Statutes 944), which is repealed by this Act. See s. 9, *post*, as to co-ordination and the powers of the Fire Service Commission.

(6) The powers of a fire authority shall include power—

- (a) to provide accommodation for any fire brigade, fire engines, appliances or equipment serving their borough or district, including housing and other accommodation for members of any such fire brigade and furniture reasonably required for such accommodation;
- (b) to purchase compulsorily by means of an order made by the authority and confirmed by the Minister of Health any land required for the purposes of their functions under this Act;
- (c) to pay to any persons who render services in connection with the extinction of fires and the protection of life and property in case of fire such rewards as they think fit, which in the case of members of a fire brigade may be in addition to their remuneration;
- (d) to employ a fire brigade maintained by them, or use any fire engine, appliance or equipment so maintained, outside their borough or district; and
- (e) to make payments in respect of any fire services provided for their borough or district by another fire authority or by any other person. [79]

(7) Where a fire authority, who are the council of a borough having a separate police force, delegate to the watch committee their functions under this Act, the watch committee may employ the chief officer of police, an assistant chief constable or the deputy chief constable on administrative duties in connection with a fire brigade maintained by

that authority and may employ other constables as members of the brigade :

Provided that, as from the expiration of a period of five years from the passing of this Act, no such other constables shall be employed as part-time members of a fire brigade. [80]

(8) A fire authority may provide and maintain fire alarms in such positions in any street or public place as they think proper, after consultation with the chief officer of police for the police area in which the fire alarms are to be placed, and any such fire alarm may be affixed to any wall or fence adjoining a street or public place :

Provided that—

(a) a fire authority before exercising the powers conferred by this subsection in relation to any trunk road shall consult with the Minister of Transport, and, before exercising those powers in relation to any county road maintained by a county council, shall consult with the county council, and the said powers shall not be so exercised as to obstruct or render less convenient the access to or exit from any station or goods yard belonging to a railway company, or any premises belonging to other statutory undertakers and used for the purposes of their undertaking ;

(b) nothing in this subsection shall affect any privilege conferred on the Postmaster-General by the Telegraph Act, 1869. [81]

This section replaces and extends P.H.A. 1925, ss. 15, 16 (13 Halsbury's Statutes 1119—20).

**2. Fire-hydrants and water supply in case of fire.**—(1) Every fire authority shall provide and maintain, or cause to be provided and maintained, such fire-hydrants as are necessary for securing the best practicable use of the available supply of water in case of fire, and the situation of every such hydrant shall be plainly indicated by a notice or distinguishing mark which may be placed on any wall or fence adjoining a street or public place. [82]

(2) The provisions of sections thirty-eight, thirty-nine, forty and forty-three of the Waterworks Clauses Act, 1847, (which require undertakers to provide and maintain fire-hydrants) as incorporated with or applied by any enactment, with or without modifications, shall have effect as if for the references to the town commissioners there were substituted references to the fire authority :

Provided that the Minister of Health may by order modify the provisions of the said section thirty-eight, in their application to any rural district, so as to extend the distances at which fire-hydrants are required to be placed under that section. [83]

(3) Where any fire-hydrant which is being maintained at the expense of a fire authority under section forty of the Waterworks Clauses Act, 1847, is damaged as the result of any person using the hydrant (otherwise than for fire brigade purposes) with the authority of the water company or person to whom the hydrant belongs, the fire authority shall not be liable for the cost of repairing or replacing the hydrant incurred as the result of the damage. [84]

(4) Any person who uses a fire-hydrant, otherwise than for the purpose of extinguishing fires or for any fire brigade purpose or any purpose

authorised by the water company or person to whom the fire-hydrant belongs, or damages or obstructs any fire-hydrant, otherwise than in consequence of its use for such a purpose as aforesaid, shall be liable on summary conviction to a fine not exceeding ten pounds. [85]

(5) At least seven days before any fire-hydrant is placed in any street, the fire authority shall give notice in writing to the authority or person by whom the street is maintained, and at least seven days before any works which affect any fire-hydrant are commenced, the authority or person by whom the works are to be executed shall give notice in writing to the fire authority. [86]

(6) A fire authority may enter into agreements with any water company or person for securing the provision for their borough or district of an adequate supply of water in case of fire. [87]

(7) A fire authority may use for the purpose of extinguishing fires any convenient or suitable supply of water, but shall be liable to pay reasonable compensation therefor :

Provided that nothing in this subsection shall affect the duty of undertakers to whom section forty-two of the Waterworks Clauses Act, 1847, applies, to supply water for the said purpose without compensation. [88]

(8) Every council who are a fire authority shall take such steps within the powers of the council as are reasonable and practicable to improve the access to or otherwise to facilitate the use of any water supply (other than a water supply available for use by means of fire hydrants) which may be required for the purpose of extinguishing fires. [89]

Improvement commissioners to whom s. 124 of the Towns Improvement Clauses Act, 1847 (13 Halsbury's Statutes 572), applied were required to provide "fireplugs" and machinery therefor, and to set up marks on buildings to indicate the site of such fireplugs. The section was reproduced in P.H.A. 1875, s. 66 (*ibid.* 653). Both these provisions are repealed by the present Act, being here reproduced in a considerably extended form. Sects. 38, 39, 40, 43 of the Waterworks Clauses Act, 1847 (20 Halsbury's Statutes 200—201), when applicable, require undertakers at the request of the town commissioners (now fire authority) to fix fireplugs in the mains and maintain them in effective order, at the expense of the fire authority. The supply of water is compulsory. All persons have a right to use the water for extinguishing fire without payment under s. 42.

**3. Power of fire authority to require proposed water works to be constructed in manner specified by them.**—(1) Where a person proposes to carry out any works for the purpose of supplying water to any part of the borough or district of a fire authority, he shall, not less than fourteen days before the works are commenced, give notice in writing thereof to the authority and the authority may, within fourteen days of the receipt of the notice, give a notice in writing to that person requiring him to carry out the works in such a manner as regards material, size and situation of pipes, pressure of water, provision for storage of water and otherwise as may be specified by the authority for the purpose of securing the best practicable supply of water in case of fire, and it shall be his duty to comply with the requirements of the fire authority :

Provided that, if he is aggrieved by the requirements of the authority, he may, within twenty-eight days of the receipt of the notice from the fire authority, appeal to the Minister of Health who may either disallow the requirements or allow them with or without modification. [90]

(2) A fire authority who exercise the powers conferred upon them by this section shall repay to the person carrying out the works the extra expenses reasonably incurred by him in complying with their requirements and shall also from time to time repay to him so much of any expenses reasonably incurred by him in repairing or maintaining the works as may be attributable to their requirements having been made and complied with, and, if any question arises as to the amount of any payment to be made to him under this subsection, that question shall in default of agreement be determined by an arbitrator appointed by the Minister of Health and the decision of the arbitrator shall be final. [91]

(3) If any person who under this section has been required by a fire authority to carry out works in a particular manner carries them out otherwise than in accordance with the requirements of the authority, he shall, without prejudice to the right of the authority to avail themselves of any other remedy, be liable on summary conviction to a fine not exceeding fifty pounds, and the court may, in addition to inflicting a fine, order him within the time specified in the order to take such steps as may be so specified for remedying the matters in respect of which he was convicted, and if he fails to comply with the order he shall be liable on summary conviction to a fine not exceeding five pounds for each day on which the default continues. [92]

**4. Expenses of rural district council in connection with fire hydrants and water supply.**—The expenses of a rural district council under sections two and three of this Act shall, notwithstanding anything in any enactment or statutory order, be general expenses of the council. [93]

**5. No payments to be made by owners and occupiers in respect of certain fire services.**—A fire authority shall not be entitled to require the owners or occupiers of property on which fires occur to make any payment in respect of local fire services or any fire services provided in pursuance of arrangements made under subsection (5) of section one of this Act or in pursuance of a scheme made under this Act, and all enactments under which fire authorities may require payments to be made by the owners or occupiers of property on which fires occur in respect of the expenses of a fire brigade in attending the fires shall cease to have effect :

Provided that this section, so far as it relates to the powers of fire authorities under any enactment mentioned in Part II of the Third Schedule to this Act or under any enactment incorporating or applying with or without modifications section thirty-three of the Town Police Clauses Act, 1847, to require payments in respect of the expenses of fire brigades in attending fires outside the borough or district of the authority by whom the brigade is maintained, shall not come into operation until the expiration of a period of two years from the passing of this Act. [94]

**6. Cessation of functions and transfer of property of parish authorities.**

—(1) As from the expiration of a period of six months from the passing of this Act, the functions of parish councils, of parish meetings and of inspectors appointed for the purposes of the Lighting and Watching Act, 1833, (hereinafter referred to as "parish authorities") in connection with the extinction of fires and the protection of life and property in case of fire in any parish, shall cease to be exercisable by them, and



all rights and property vested in, and all liabilities incurred by, any parish authority for the purposes of those functions shall by virtue of this section be transferred to the fire authority for the district in which the parish is situated :

Provided that the Secretary of State may by order postpone the operation of this subsection, in relation to any parish, to such date as may be specified in the order. [95]

For the Lighting and Watching Act, 1833, see 8 Halsbury's Statutes 1186.

(2) A fire authority to whom property, rights and liabilities are transferred from a parish authority under this section shall, if the value of the property and rights is more than sufficient to defray the liabilities, pay to the parish authority such sum as may be agreed upon or, in default of agreement, may be determined by arbitration under this section, and any capital sum so paid shall be treated as capital, and applied with the consent of the Minister of Health and subject to any conditions which he may impose either in the payment of debt or for any other purpose for which capital money may properly be applied :

Provided that any such sum may, with the consent of the parish authority, be held by the fire authority and applied by them, subject to and in accordance with the foregoing provisions with respect to capital sums, for the benefit of the parish. [96]

(3) All deeds, bonds and agreements made or entered into by a parish authority for the purposes of the functions aforesaid shall, so far as they relate to property, rights and liabilities transferred to a fire authority under this section, have effect as from the date of the transference with the substitution of the fire authority for the parish authority and may be enforced by or against the fire authority accordingly ; and all proceedings relating to any such property, rights and liabilities, which are pending at the said date, may be carried on thereafter with the substitution of the fire authority as party to the proceedings in lieu of the parish authority. [97]

(4) Any question as to the property, rights or liabilities transferred to, or as to the compensation to be paid by, a fire authority under this section shall be determined by an arbitrator appointed by the Secretary of State, and the decision of the arbitrator shall be final. [98]

(5) The provisions of this section shall be without prejudice to the provisions of sections eighty-seven and eighty-eight of the Local Government Act, 1933, as to the delegation of the functions of a rural district council to a parochial committee or parish council. [99]

For ss. 87, 88 of L.G.A. 1933, see 26 Halsbury's Statutes 353—4.

**7. Provisions for transfer and compensation of employees of parish authorities.**—On the date when the functions of any parish authority cease to be exercisable by that authority by virtue of the last foregoing section, any person who was, immediately before that date, employed by a parish authority for the purposes of those functions, shall be employed by the fire authority in whose district the parish is situated on the terms and conditions on which he was so employed immediately before that date, and any of his service in the brigade of the parish authority, which is approved service within the meaning of the Fire Brigade Pensions Act, 1925, shall be reckoned for the purposes of that Act as approved service in the brigade of the fire authority ; and the provisions of subsections (2) (3) and (6) of section one hundred and

fifty of the Local Government Act, 1933, and of the Fourth Schedule to that Act shall apply to persons transferred to employment by a fire authority under this section as they apply to officers transferred under a scheme or order made under the said section one hundred and fifty, with such adaptations as may be made by an order of the Secretary of State. [100]

For the Fire Brigade Pensions Act, 1925, see 13 Halsbury's Statutes 1095 *et seq.* As to "approved service," see ss. 6—9 of that Act (*ibid.* 1097—1099). For s. 150 of L.G.A. 1933, see 26 Halsbury's Statutes 388. The incorporated subsections deal with the rights of transferred officers who are required to undertake more onerous duties or whose appointments are determined.

### *Co-ordination of fire services.*

#### **8. Appointment of Fire Service Commission to report on fire services.**

—(1) A Commission shall be constituted under this Act, to be called "the Fire Service Commission," for the purpose of considering the arrangements made by fire authorities for the provision of assistance for the purpose of dealing with fires which cannot adequately be dealt with by the local fire services, and of reviewing generally the fire services provided by fire authorities under this Act, and of reporting to the Secretary of State on the matters aforesaid. [101]

(2) The provisions of the First Schedule to this Act shall have effect with respect to the constitution and proceedings of the Fire Service Commission. [102]

(3) The Fire Service Commission may, for the purposes of the exercise of their functions, hold such local inquiries as they think fit, and subsections (2) and (3) of section two hundred and ninety of the Local Government Act, 1933, shall apply to such inquiries. [103]

For L.G.A. 1933, s. 290 (2), (3), see 26 Halsbury's Statutes 459.

**9. Schemes for co-ordination of fire services.**—(1) If the Fire Service Commission report, as respects any fire authorities, that adequate arrangements have not been made for the provision of such assistance as aforesaid, they may submit to the Secretary of State a scheme (hereinafter referred to as a "co-ordination scheme") for ensuring the provision by those authorities of such assistance:

Provided that, before submitting any co-ordination scheme to the Secretary of State, the Fire Service Commission shall give an opportunity to all fire authorities affected by the scheme and to any other persons appearing to the Commission to be specially concerned to make representations with respect thereto, and shall submit any such representations together with the scheme. [104]

(2) A co-ordination scheme shall provide for the payments to be made by the fire authorities to whom the scheme applies in respect of assistance provided under the scheme, and, if the Secretary of State has by order prescribed scales for such payments, the scheme shall apply those scales with or without modifications, and the scheme may provide that the payments shall be made out of a common fund to which the fire authorities shall contribute in such proportions as may be specified in the scheme, and may make provision for the management of the fund, the enforcement of contributions thereto, and the auditing of the accounts of the fund by the district auditor. [105]

(3) A co-ordination scheme may contain such provisions requiring uniformity of appliances and equipment as appear to the Fire Service

Commission to be necessary for the purpose of ensuring that the fire brigades affected will be able to render efficient assistance in pursuance of the scheme. [106]

(4) A co-ordination scheme shall come into operation when approved by the Secretary of State, either without modifications or after making such modifications therein as he thinks fit, and when a scheme has been so approved, it shall be the duty of the fire authorities to whom the scheme applies to carry it into effect, and any arrangements made under subsection (5) of section one of this Act which are not in conformity with the scheme shall cease to have effect. [107]

(5) If at any time the Fire Service Commission, after consultation with the fire authorities affected, submit to the Secretary of State proposals for amending any co-ordination scheme, the Secretary of State may amend the scheme in accordance with the proposals, subject to any modifications which he may think fit. [108]

See s. 1 (3), (5), *ante*, as to arrangements between fire authorities.

**10. Power of Fire Service Commission to recommend provision of local fire services for any district by another fire authority.**—(1) Where any fire authority have requested another fire authority to provide the whole or any part of the local fire services for the borough or district of the first named fire authority, and the other fire authority are unwilling to provide such services, or the authorities cannot agree as to the extent of the services to be provided or the terms on which they are to be provided, the first named fire authority may make an application to the Fire Service Commission. [109]

(2) If the Fire Service Commission, after giving an opportunity to the fire authorities concerned to make representations and, if they think fit or if any such fire authority requests them to do so, after holding a local inquiry, are satisfied that it is expedient, with a view to securing greater efficiency or economy, that the whole or any part of the local fire services for the borough or district of the applicant fire authority should be provided by the other fire authority, they may recommend to the Secretary of State that such local fire services shall be so provided on such terms as they may specify, and the Secretary of State may by order give effect to the recommendations, with or without modifications, and thereupon it shall be the duty of the fire authorities concerned to give effect to the order. [110]

(8) The costs of the Fire Service Commission in holding a local inquiry for the purposes of this section shall be paid by such fire authority, or by such fire authorities in such proportions, as the Commission may direct, and the Commission may certify the amount of the said costs and, if they are to be paid by two or more authorities, the amounts to be paid by the several authorities, and any amount so certified and directed to be paid by a fire authority shall be recoverable from that authority as a debt to the Crown, or by the Secretary of State summarily as a civil debt. [111]

**11. Fire service boards.**—(1) If the Secretary of State is satisfied, at any time after the expiration of two years from the passing of this Act, after holding a local inquiry, that efficient fire services have not been provided or are not being maintained for any borough or district in accordance with section one of this Act, he may appoint a board, to be called "a fire service board," for such area as he may specify. [112]

(2) The provisions set out in the Second Schedule to this Act shall have effect with respect to the constitution, proceedings and dissolution of fire service boards. [113]

(3) As from the date of the appointment of a fire service board, no arrangements shall be entered into under section one of this Act by the fire authorities of the boroughs or districts situated in the area for which the board was appointed without the approval of the fire service board. [114]

**12. Fire service area schemes.**—(1) Where a fire service board has been appointed for any area, the board shall prepare and submit to the Secretary of State a scheme (hereinafter referred to as “an area scheme”) for ensuring the provision and maintenance by the fire authorities under the general supervision of the board of efficient fire services throughout the area for which the board was appointed. [115]

(2) An area scheme shall come into operation when approved by the Secretary of State, either without modifications, or after making such modifications therein as he thinks fit, and when a scheme has been so approved, it shall be the duty of the fire authorities in the area to carry it into effect and to exercise their functions under the foregoing provisions of this Act in accordance with the scheme, and any arrangements entered into by any such fire authorities under section one of this Act which are not in conformity with the scheme shall cease to have effect. [116]

(3) If at any time the fire service board for any area, after consultation with the fire authorities in the area, submit to the Secretary of State proposals for amending the area scheme, the Secretary of State may amend the scheme in accordance with the proposals, subject to any modifications which he may think fit. [117]

**13. Default powers of fire service boards.**—(1) If a complaint is made to the Secretary of State by a fire service board that any fire authority have failed in any respect to carry out the area scheme, the Secretary of State may cause a local inquiry to be held into the matter, and if he is satisfied after the inquiry that there has been such a failure on the part of the authority, he may make an order transferring to the fire service board such of the functions of the defaulting authority under this Act as may be specified in the order, and, while the order is in force, the fire service board shall discharge those functions in place of the authority, and in respect of those functions references in this Act to a fire authority shall, except where the context otherwise requires, be construed as including references to the fire service board. [118]

(2) A fire service board to whom functions are transferred under the foregoing subsection may borrow money for the purpose of meeting any expenses incurred by them in the discharge of those functions, and Part IX of the Local Government Act, 1933 (which relates to borrowing by local authorities) shall apply, subject to such adaptations as may be made by the order transferring the functions, to fire service boards in like manner as they apply to local authorities. [119]

For Part IX of L.G.A. 1933, see 26 Halsbury's Statutes 412 *et seq.*

(3) A fire service board shall have power to issue precepts to any fire authority, whose functions have been transferred to the board, requiring them, within a time limited by the precept, to pay such amounts as will in the opinion of the board be sufficient to defray



expenses incurred or to be incurred in the discharge of functions so transferred, including payments, whether of principal or interest, in respect of any money borrowed under the last foregoing subsection; and any sum for which a precept has been issued under this section to a fire authority shall be a debt due from that authority to the fire service board, and may be recovered accordingly, without prejudice, however, to the right of the board to exercise any powers conferred upon precepting authorities by section thirteen of the Rating and Valuation Act, 1925. [120]

Sect. 13 of the Rating and Valuation Act, 1925 (14 Halsbury's Statutes 617), empowers a precepting authority, on default by the rating authority, to obtain the appointment of a receiver.

(4) Where functions have been transferred to a fire service board under this section, the accounts of the board shall be so kept as to show in a separate account such income and expenses of the board as are attributable to the exercise of functions so transferred, and if functions have been transferred to the board from two or more fire authorities, separate accounts shall be kept in respect of each authority. [121]

(5) Where an order transferring functions to a fire service board is revoked, the functions shall again be exercisable by the authority from whom they were transferred, and the revoking order may provide for the transference to that authority, upon such terms as may be agreed or, in default of agreement, determined in accordance with the order, of any property, rights and liabilities acquired or incurred by the board for the purpose of the exercise of those functions. [122]

#### *Miscellaneous.*

**14. Powers of fire brigades and police in extinguishing fires.**—(1) Any member of a fire brigade which provides local fire services under this Act being on duty, and any police constable, may enter and if necessary break into any premises or place in which a fire has or is reasonably supposed to have broken out, or any premises or place which it is necessary to enter for the purpose of extinguishing a fire, without the consent of the owner or occupier thereof, and may do all such acts and things as they may deem necessary for extinguishing fire or for protecting from fire any such premises or place or rescuing any person or property therein. [123]

(2) Any person who wilfully obstructs or interferes with any member of a fire brigade engaged in operations for the extinction of a fire or the protection or rescue of any person or property from fire shall be liable on summary conviction to a fine not exceeding ten pounds. [124]

(8) At any fire the senior officer present of the fire brigade maintained for the borough or district in which the fire originates, or, if any scheme or arrangement made under this Act provides that any other person shall have charge of the operations for the extinction of the fire, that other person, shall have the sole charge and control of all operations for the extinction of the fire including the fixing of the positions of fire engines and apparatus, the attaching of hose to any water pipes or the use of any water supply, and the selection of the parts of the building on fire or of adjoining buildings against which the water is to be directed, and may require the water to be shut off from the mains and pipes in



any area in order to give a greater supply and pressure of water for extinguishing the fire, and no authority, company, or person shall be liable to any penalty or claim by reason of the interruption of the supply of water occasioned only by compliance with such a requirement.

[125]

(4) The senior officer of police present at any fire may close for traffic any street or may stop or regulate the traffic in any street whenever in the opinion of that officer it is necessary or desirable to do so for the purpose of extinguishing fire or for the safety or protection of life or property. [126]

This section reproduces with amendments ss. 88, 89 of P.H.A. 1907 (13 Halsbury's Statutes 944).

**15. Power to exempt trailers used for fire services from traffic restrictions.**—The Minister of Transport may by regulations provide that, in such cases and subject to such conditions as may be specified by the regulations, vehicles used for fire brigade purposes shall be exempt from the provisions of section eighteen of the Road Traffic Act, 1930 (which restricts the number of trailers to be drawn by motor vehicles); and the provisions of the said Act as to regulations made thereunder shall apply in like manner to regulations made under this section. [127]

For s. 18 of the Road Traffic Act, see 23 Halsbury's Statutes 624.

**16. Extension of Fire Brigade Pensions Act, 1925, to temporary firemen.**—(1) Where any member of a fire brigade maintained by a fire authority under this Act, who has been a professional fireman or member of a police force, is wholly but not permanently employed on fire brigade duties and while so employed is incapacitated for the performance of his duty by infirmity of mind or body occasioned by an injury received in the execution of his duty without his own default, or dies from the effects of an injury received in, or disease resulting from, the execution of his duty without his own default, the like special pension to himself or pension to his widow and allowances or gratuities to his children or dependants shall be payable under the Fire Brigade Pensions Act, 1925, as would have been payable under that Act if he had been a professional fireman, when incapacitated, but based on his current rate of pay and his service with the brigade since he last joined it. [128]

For the Fire Brigade Pensions Act, 1925, see 13 Halsbury's Statutes 1095 *et seq.* That Act applies to "professional firemen," and that expression is defined (s. 23, *ibid.* 1107) to mean "any member of a fire brigade maintained by a local authority who is wholly and permanently employed on fire brigade duties, and to whom the Police Pensions Act, 1921 (12 Halsbury's Statutes 873), does not apply." This subsection extends the provisions of the Act as to incapacity or death on duty (ss. 2 (1) (c), 3, *ibid.* 1096—7) to members of fire brigades who have been policemen or "professional firemen," but are not at the time of the incapacity or death so employed as to come within that definition by reason of the fact that their employment is not permanent.

(2) Where any special pension is payable under the foregoing subsection in respect of a person to whom an ordinary pension is already payable under the Police Pensions Act, 1921, or the Fire Brigade Pensions Act, 1925, the special pension shall be payable in addition to his ordinary pension, but no increase shall be made in his ordinary pension in respect of service to which this section relates and the aggregate amount of the two pensions shall not exceed his annual pay at the date of his retirement on which the ordinary pension became payable. [129]

(3) Where pensions, allowances, or gratuities are payable under any local Act to members of a fire brigade who have been wholly and

permanently employed on fire brigade duties, the Secretary of State may direct that the provisions of this section shall apply with respect to that fire brigade with such modifications as he considers necessary. [130]

**17. Definition of "fire brigade duties" for purposes of Fire Brigade Pensions Act, 1925, and this Act.**—(1) For the purposes of the Fire Brigade Pensions Act, 1925, and this Act, the expression "fire brigade duties" includes any of the following duties, that is to say:—

- (a) duties carried out on the direction of the fire authority in connection with fire prevention;
- (b) duties in connection with the construction, repair or maintenance of any fire engines, or of any vehicles, appliances, or equipment used for fire brigade, ambulance or police purposes, or duties consisting of the driving or manning of ambulances; and
- (c) other duties ancillary to or connected with fire brigade purposes, being duties carried out on the direction of the fire authority.

[131]

(2) For the purposes of the said Fire Brigade Pensions Act, 1925, in its application to any member of a fire brigade maintained by a fire authority who is wholly and permanently employed on the said duties at the passing of this Act, not being a person to whom the next following subsection applies, the said expression shall be deemed to have had the said meaning during any period before the passing of this Act during which he was treated as subject to the said Fire Brigade Pensions Act, 1925, or any period during which the fire authority may in their discretion certify that he was wholly and permanently employed on the said duties. [132]

"Fire brigade duties" are not defined in the Fire Brigade Pensions Act, 1925 (13 Halsbury's Statutes 1095 *et seq.*). In *Whelan and Others v. Billingham U.D.C.*, [1937] Ch. 662; [1937] 3 All E. R. 387; Digest Supp.), the meaning of these words was considered in relation to the definition of "professional fireman" in the Act of 1925. In that case men permanently employed by a local authority as members of a fire brigade were required, in addition to maintaining the equipment of the brigade in a state of efficiency, to perform such duties as making concrete kerbing, repairing vehicles not forming part of the brigade equipment, etc. This work was of a very varied nature and included some duties, e.g. pumping flood water from cellars, which involved the use of fire brigade equipment but were not extinction of fires, and others, such as those instanced above, which were in no way connected with the fire brigade. It was held by Clauson, J., that none of these firemen was a "professional fireman" within the Act. The decision, of course, had relation only to the particular facts of the case, and did not remove doubts as to the interpretation of the definition in relation to other facts, and the present section is an attempt to clarify the position by including certain functions as to which doubt might exist in the definition of "fire brigade duties." Para. (c) is still somewhat ambiguous, but no doubt includes pumping operations or the well-recognised function of rescuing animals from trees and roofs, but there remains room for doubt as to the application of the definition to duties which are not performed by a team of firemen acting as a fire brigade.

(3) Where any person, who at the passing of this Act holds a post by virtue of which he is or is being treated as subject to the Local Government and other Officers' Superannuation Act, 1922 (hereinafter referred to as "the Act of 1922"), or to a local Act scheme, becomes by virtue of this section a professional fireman and would, if he did not exercise his option under this subsection, be subject to the Fire Brigade Pensions Act, 1925, the fire authority shall, as soon as may be after regulations have been made by the Minister of Health under the next following subsection give him written notice of the effect of this section, and if, within one month after receiving that notice, he gives written notice to the fire authority that he desires that the provisions of the Act

of 1922 or of the local Act scheme, as the case may be, should continue to apply to him, the said provisions shall apply to him, and be deemed to have applied to him as from the passing of this Act, in lieu of the provisions of the Fire Brigade Pensions Act, 1925. [133]

For the L. G. etc., Superannuation Act, 1922, see 10 Halsbury's Statutes 863.

(4) If any such person as aforesaid does not give a written notice under the last foregoing subsection, the provisions of the Fire Brigade Pensions Act, 1925, shall apply to him and be deemed to have applied to him as from the passing of this Act, in lieu of the provisions of the Act of 1922 or of the local Act scheme, as the case may be, and—

- (a) account shall be taken for the purposes of the Fire Brigade Pensions Act, 1925, in such manner as may be prescribed by regulations made by the Minister of Health, of his previous service with any local authority ;
- (b) a transfer value ascertained in accordance with the provisions of the Local Government Officers' Superannuation (Transfer Value) Rules, 1930, shall be paid out of the superannuation fund maintained under the Act of 1922, or under the local Act scheme, as the case may be, to the fire brigade pension fund or, if there is no such fund, to the general rate fund of the borough or district ; and
- (c) for the purposes of any return or application of his rateable deductions under section eighteen of the Fire Brigade Pensions Act, 1925, there shall be included in the aggregate amount of his rateable deductions so much of the said transfer value as represents contributions or additional contributory payments paid or made by him under the Act of 1922 or the local Act scheme. [134]

For regulations made under para. (a), see the Fire Brigade Pensions Regulations 1938, *post*.

(5) At the end of paragraph 2 of Part II of the First Schedule to the Local Government Superannuation Act, 1937 (which specifies persons who shall not become contributory employees or local Act contributors within the meaning of that Act), there shall be added the words “ not “ being a fireman who has given a written notice under subsection (2) “ of section twenty-four of the Fire Brigade Pensions Act, 1925, or “ under subsection (3) of section seventeen of the Fire Brigades Act, “ 1938 ”. [135]

For Part II of the First Schedule to the L.G. etc., Superannuation Act, 1937, see 30 Halsbury's Statutes 420.

(6) Any person who at the passing of this Act is in the service of a local authority as respects whom the Act of 1922 is in operation, or of a local authority administering a local Act scheme, and is being treated as subject to the Fire Brigade Pensions Act, 1925, but is not a professional fireman, shall by virtue of this subsection—

- (a) be deemed to hold a post by virtue of which he is subject to the Act of 1922, or the local Act scheme, as the case may be ; and
- (b) be entitled to reckon any period of service during which he was treated as subject to the Fire Brigade Pensions Act, 1925, as contributing service for the purposes of the Act of 1922, or the local Act scheme, as the case may be, and any deductions made from his pay during such a period shall be deemed to be contributions for all purposes of the Act of 1922 or the local Act scheme ; and

the authority shall transfer from the fire brigade pension fund or, if there is no such fund, the general rate fund of the borough or district to the superannuation fund maintained under the Act of 1922, or the local Act scheme, as the case may be, an amount equal to twice the aggregate amount of the said deductions. [136]

(7) All regulations made by the Minister of Health under this section shall be laid as soon as may be before Parliament, and if either House within the next twenty-eight days on which that House has sat after any regulation has been laid before it, resolves that the regulation be annulled, the regulation shall be of no effect, but without prejudice to the validity of anything done in the meantime thereunder or to the making of a new regulation. [137]

(8) In this section the expression "additional contributory payment" has the same meaning as in the Local Government Superannuation Act, 1937, and the expression "local Act scheme" means a superannuation scheme administered by a local authority under a local Act. [138]

**18. Central Advisory Council for Fire Services.**—(1) The Secretary of State shall appoint a Council, to be called the Central Advisory Council for Fire Services, for the purpose of advising the Secretary of State on any question which may be referred by him to the Council with respect to any matter arising in connection with the operation of this Act. [139]

(2) The Secretary of State may, after consultation with such associations as represent fire authorities, by order make provision with respect to the constitution and proceedings of the Council. [140]

**19. Appointment of inspectors.**—The Secretary of State may, for the purpose of obtaining reports as to the manner in which this Act is carried out, appoint such inspectors and there shall be paid to them such remuneration as the Secretary of State may with the consent of the Treasury determine, and such remuneration shall be defrayed as part of the expenses of the Secretary of State incurred for the purposes of this Act. [141]

**20. Establishment of training centre.**—(1) The Secretary of State may establish a training centre for providing special courses of instruction for members of fire brigades, and the expenses incurred in connection with the training centre shall, to such amount as may be approved by the Treasury, be defrayed as part of the expenses of the Secretary of State incurred for the purposes of this Act. [142]

(2) The Secretary of State may approve training centres established by fire authorities for providing courses of instruction for members of their own or other fire brigades and for training persons for service in fire brigades. [143]

**21. Loan to fire authorities of appliances provided under the Air-Raid Precautions Act, 1937.**—Regulations made by the Secretary of State under section eleven of the Air-Raid Precautions Act, 1937, may provide for the use by fire authorities for the purposes of their functions under this Act of any equipment, appliances or material acquired by the Secretary of State on behalf of His Majesty under the said Air-Raid



Precautions Act, 1937, and lent to those authorities for the purposes of that Act. [144]

For the Air-Raid Precautions Act, 1937, see 30 Halsbury's Statutes 1025. Sect. 9 of that Act authorises the acquisition of equipment, appliances, and other material by the Secretary of State. For regulations made, see the Air-Raid Precautions (Loan of Fire Appliances) Provisional Regulations, 1938.

**22. Power of Secretary of State to require uniformity of appliances and equipment.**—The Secretary of State may by order impose such requirements with respect to uniformity of appliances, equipment, and fire hydrants provided for the purposes of this Act as appear to him to be necessary for securing efficient fire services and in particular the rendering of efficient mutual assistance by fire brigades, and it shall be the duty of fire authorities to comply with any such requirements. [145]

*Supplementary.*

**23. Notices.**—Any notice required or authorised by this Act to be given to any person may be given either—

- (a) by delivering it to that person, or by leaving it or sending it in a prepaid letter addressed to him at his usual or last known residence; or
- (b) in the case of an incorporated company or body, by delivering it to their secretary or clerk at their registered or principal office, or by sending it in a prepaid letter addressed to him at that office. [146]

**24. Provisions as to orders of Secretary of State.**—(1) Any order made by the Secretary of State under this Act may be varied or revoked by a subsequent order made in like manner as the original order. [147]

(2) Before making any order prescribing scales of payments for fire services or any order requiring uniformity of appliances and equipment and fire hydrants, the Secretary of State shall consult the Central Advisory Council for Fire Services, and before making any order prescribing standards of efficiency for fire services, the Secretary of State shall consult with the said Council and with such associations representing fire authorities as appear to him to be concerned and with any fire authorities with whom consultation appears to him to be desirable. [148]

(3) Any order made by the Secretary of State prescribing standards of efficiency for fire services and any order made by him requiring uniformity of appliances and equipment and fire hydrants shall be laid as soon as may be before Parliament, and if either House within the next twenty-eight days on which that House has sat after the order has been laid before it resolves that the order be annulled, the order shall be of no effect, but without prejudice to the validity of anything done in the meantime thereunder or to the making of a new order. [149]

**25. Power of Secretary of State to hold inquiries.**—The Secretary of State may hold a local inquiry into the manner in which any fire authority are performing their functions under this Act. [150]

**26. Expenses of the Secretary of State, Fire Service Commission, fire service boards and Central Advisory Council.**—All expenses of the Secretary of State incurred for the purposes of this Act in the administration thereof, in the payment of remuneration or allowances to any



person appointed thereunder, or in connection with the training centre established by him, and any expenses authorised by the Secretary of State with the consent of the Treasury to be incurred by the Fire Service Commission, by any fire service board or by any Central Advisory Council for Fire Services shall, except as is herein otherwise expressly provided, be defrayed out of moneys provided by Parliament. [151]

**27. Provisions as to London.**—(1) The provisions of subsections (3) to (7) of section two and the provisions of sections three, five, fifteen and twenty-one of this Act shall apply to the administrative county of London and the London County Council, and accordingly—

- (a) the references in those provisions to a fire authority and to the borough or district of a fire authority shall be construed as including references to the London County Council and the administrative county of London, respectively; and
- (b) the reference in section twenty-one to this Act shall be construed as including a reference to the Metropolitan Fire Brigade Act, 1865:

Provided that nothing in the said section five shall be taken to affect section sixty of the London County Council (General Powers) Act, 1934. [152]

For the Metropolitan Fire Brigade Act, 1865, see 11 Halsbury's Statutes 997.  
For s. 60 L.C.C. (G.P.) Act, 1934, see 27 Halsbury's Statutes 431.

(2) The provisions of section one of this Act, so far as they relate to the provision of fire services for any borough or district by other fire authorities, shall have effect so as to enable such fire services to be provided by the London County Council, and accordingly the references in subsections (3) and (5) of section one to other fire authorities and the references in subsection (4) thereof to a fire authority shall be construed as including references to the London County Council; and the duty of a fire authority (not including the London County Council) under subsection (5) of section one of this Act may be discharged, either in whole or in part, by entering into arrangements with the London County Council under section forty-nine of the London County Council (General Powers) Act, 1936. [153]

For s. 49 L.C.C. (G.P.) Act, 1936, see 29 Halsbury's Statutes 287.

(3) The London County Council shall have power to purchase compulsorily by means of an order made by the Council and confirmed by the Minister of Health any land required for the purposes of their functions under the Metropolitan Fire Brigade Act, 1865, and the provisions of sections one hundred and sixty-one, one hundred and sixty-two, one hundred and seventy-four, and one hundred and seventy-five of the Local Government Act, 1933, and of paragraphs (a) and (c) of section one hundred and seventy-nine of that Act shall apply with respect to any such order as if for the references to a local authority there were substituted references to the London County Council. [154]

For these sections of L.G.A., 1933, see 26 Halsbury's Statutes 394, 396, 401, 402, 403.

(4) The power of the London County Council under section thirty of the Metropolitan Fire Brigade Act, 1865, to permit any part of their fire brigade establishment to be employed on special services shall include a power to permit such employment without requiring any remuneration from the persons to whom the services are rendered. [155]

(5) Save as is in this section provided, this Act shall not apply to the administrative county of London or to the London County Council. [156]

**28. Application to Scotland. [157]**

**29. Interpretation.**—(1) In this Act the following expressions have the meanings hereby respectively assigned to them, that is to say:—

“Chief officer of police,” “police area” and “police force” have the same respective meanings as in the Police Pensions Act, 1921;

“Enactment” includes a local Act and a provisional order confirmed by an Act;

“Professional fireman” has the same meaning as in the Fire Brigade Pensions Act, 1925;

“Street,” “railway company,” “statutory undertakers,” and “statutory order” have the same respective meanings as in the Public Health Act, 1936. [158]

(2) In relation to a rural district with respect to which there is in force such a direction as is mentioned in subsection (2) of section forty-two of the Local Government Act, 1933, any reference in this Act to the council of a county district shall be construed as a reference to the council by whom the affairs of the district are being temporarily administered. [159]

For L.G.A. 1933, s. 42 (2), see 26 Halsbury's Statutes 326.

(3) The references in sections sixteen and seventeen of this Act to a fire authority shall include references to any parish authority whose functions in connection with the extinction of fires and the protection of life and property in case of fire have not ceased to be exercisable by them. [160]

(4) References in this Act to any enactment shall be construed as references to that enactment as amended by any subsequent enactment including this Act. [161]

**30. Short title, extent and repeals.**—(1) This Act may be cited as the Fire Brigades Act, 1938.

(2) This Act shall not extend to Northern Ireland.

(3) The enactments mentioned in the Third Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule and there shall also be repealed so much of any enactment as incorporates or applies, with or without modifications, section one hundred and twenty-four of the Towns Improvement Clauses Act, 1847, or section thirty-two or section thirty-three of the Town Police Clauses Act, 1847:

Provided that—

(a) the repeal of the enactments mentioned in Part II of the said Schedule and of any enactment incorporating or applying, with or without modifications, section thirty-three of the Town Police Clauses Act, 1847, shall not take effect until the expiration of a period of two years from the passing of this Act; and

- (b) the repeal of such of the enactments mentioned in the said Schedule as relate to the functions of parish authorities shall not take effect, as respects any such authority, until those functions cease to be exercisable by that authority. [162]
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## SCHEDULES.

### Sect. 8.

#### FIRST SCHEDULE.

##### CONSTITUTION AND PROCEEDINGS OF FIRE SERVICE COMMISSION.

1. The Fire Service Commission shall consist of a chairman and not less than three nor more than five other members appointed by the Secretary of State, who shall hold office for such term and on such conditions as to retirement as may be determined by the Secretary of State.
  2. The Secretary of State shall appoint a secretary or secretaries to the Fire Service Commission ; and there shall be paid to the chairman, members and secretary or secretaries such remuneration and such travelling and other allowances as the Secretary of State may with the consent of the Treasury determine, and all such remuneration and allowances shall be defrayed as part of the expenses of the Secretary of State incurred for the purposes of this Act.
  3. The proceedings of the Fire Service Commission shall not be invalidated by reason of any vacancy in the Commission or by any defect in the appointment of any member, and subject to any directions which may be given by the Secretary of State, the Fire Service Commission shall have power to regulate its own quorum and procedure. [163]
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### Sect. 11.

#### SECOND SCHEDULE.

##### CONSTITUTION, PROCEEDINGS AND DISSOLUTION OF FIRE SERVICE BOARDS.

1. A fire service board shall consist of a chairman appointed by the Secretary of State and such other members as may be so appointed, and shall be a body corporate by the name of the Fire Service Board together with the name of the area for which it is constituted, and shall have a common seal and power to hold land without licence in mortmain.
2. The chairman and members of a fire service board shall hold office for such term and on such conditions as to retirement as may be determined by the Secretary of State.
3. The Secretary of State shall appoint a secretary to the board, and the board may, with the approval of the Secretary of State, appoint such other officers and servants as they may require for the execution of their duties.
4. There shall be paid to the chairman, members, secretary, officers and servants of a fire service board such remuneration and such travelling and other allowances as the Secretary of State may with the consent of the Treasury determine, and all such remuneration and allowances, except so far as they are attributable to the exercise of functions transferred to the board from a defaulting authority under section thirteen of this Act, shall be defrayed as part of the expenses of the Secretary of State incurred for the purposes of this Act.
5. A fire service board may enter into such agreements, acquire, deal with, and dispose of such property, and do such things, as may in their opinion be necessary or desirable for the execution of their duties.

6. The proceedings of a fire service board shall not be invalidated by reason of any vacancy in the board or by any defect in the appointment of any member, and, subject to any directions which may be given by the Secretary of State, a fire service board shall have power to regulate its own quorum and procedure.

7. The accounts of a fire service board shall be subject to audit by a district auditor.

8. The Secretary of State may by order dissolve a fire service board and provide for the winding-up of the board. [164]

### THIRD SCHEDULE.

Sects. 5, 30.

#### ENACTMENTS REPEALED.

#### PART I.

#### ENACTMENTS REPEALED AS FROM THE PASSING OF THIS ACT.

Session and Chapter.	Short Title.	Extent of Repeal.
3 & 4 Will. 4. c. 90	The Lighting and Watching Act, 1833.	Section forty-four.
10 & 11 Vict. c. 34	The Towns Improvement Clauses Act, 1847.	Section one hundred and twenty-four.
10 & 11 Vict. c. 89	The Town Police Clauses Act, 1847.	Section thirty-two.
10 & 11 Vict. c. cclxxxiv.	An Act to purchase and define the manorial and market rights of Stockport, to establish public parks, to purchase or lease waterworks, to build bridges and to make other communications within the borough of Stockport.	Section twenty-three.
25 & 26 Vict. c. cciii.	The Aberdeen Police and Waterworks Act, 1862.	Sections one hundred and forty-nine to one hundred and fifty-one, sections one hundred and fifty-three to one hundred and fifty-six and section one hundred and fifty-eight so far as relating to fires within the limits of the Act.
25 & 26 Vict. c. ccv.	The Salford Improvement Act, 1862.	Section two hundred and seventy-four, so far as it relates to payments by owners of property.
28 & 29 Vict. c. ccl	The Newcastle-upon-Tyne Improvement Act, 1865.	Section one hundred and one.
29 & 30 Vict. c. xxix.	The Manchester Town Hall and Improvement Act, 1866.	Section twenty.
29 & 30 Vict. c. li	The Tynemouth Improvement Act, 1866.	Section forty-five.
29 & 30 Vict. c. cclxxiii.	The Glasgow Police Act, 1866.	Sections one hundred and fifty-eight to one hundred and sixty-one, sections one hundred and sixty-three to one hundred and sixty-six and section one hundred and sixty-eight so far as relating to fires within the city.
30 & 31 Vict. c. 106.	The Poor Law Amendment Act, 1867.	Section twenty-nine.
33 & 34 Vict. c. cxx.	The Newcastle-upon-Tyne Improvement Act, 1870.	Section one hundred and four.
38 & 39 Vict. c. 55	The Public Health Act, 1875.	Section sixty-six, in section one hundred and sixty-three, the words "fire engines hose," and paragraph (2) of section one hundred and seventy-one so far as it incorporates section thirty-two of the Town Police Clauses Act, 1847.

Session and Chapter.	Short Title.	Extent of Repeal.
45 & 46 Vict. c. clxxxv.	The Dundee Police and Improvement Consolidation Act, 1882.	Section two hundred and thirty-five in so far as it incorporates the provisions of section three hundred and forty-five of the General Police and Improvement (Scotland) Act, 1862, relating to the expenses of extinguishing fires or of section three hundred and forty-six of that Act, and sections two hundred and thirty-six to two hundred and thirty-nine and section two hundred and forty-two.
55 & 56 Vict. c. 55	The Burgh Police (Scotland) Act, 1892.	Section two hundred and ninety in so far as relating to the expenses of extinguishing fires; sections two hundred and ninety-one to two hundred and ninety-five and section two hundred and ninety-nine.
56 & 57 Vict. c. 10	The Police Act, 1893	Section two.
56 & 57 Vict. c. 73	The Local Government Act, 1894.	In sub-paragraph (ii) of paragraph (c) of subsection (1) of section six, the words "and of a fire engine, fire escape".
58 & 59 Vict. c. cxliii.	The Glasgow Corporation and Police Act, 1895.	Section thirty.
61 & 62 Vict. c. 38	The Parish Fire-engines Act, 1898.	The whole Act.
7 Edw. 7. c. 53	The Public Health Acts Amendment Act, 1907.	Sections eighty-seven to ninety.
7 Edw. 7. c. lxii	The Dundee Corporation Order Confirmation Act, 1907.	Section seventy-nine of the Order contained in the Schedule.
8 Edw. 7. c. 62	The Local Government (Scotland) Act, 1908.	Section eight except subsections (4) and (5).
9 Edw. 7. c. cxxix	The Greenock Corporation Act, 1909.	Sections three hundred and seventy-seven to three hundred and seventy-nine, sections three hundred and eighty-one, and three hundred and eighty-two, and section three hundred and eighty-four except in so far as relating to section two hundred and ninety-eight of the Burgh Police (Scotland) Act, 1892.
15 & 16 Geo. 5. c. 71.	The Public Health Act, 1925.	Section fifteen.
20 & 21 Geo. 5. c. clxxvii.	The Glasgow Corporation Act, 1930.	Section thirty-nine in so far as it relates to section one hundred and sixty-six of the Glasgow Police Act, 1866.
22 & 23 Geo. 5. c. xlii.	The Dundee Corporation Order Confirmation Act, 1932.	Section forty-nine of the Order contained in the Schedule in so far as it relates to section three hundred and forty-six of the General Police and Improvement (Scotland) Act, 1862, or to section two hundred and forty-two of the Dundee Police and Improvement Consolidation Act, 1882.
24 Geo. 5. c. v	The Edinburgh Corporation Order Confirmation Act, 1933.	Sections one hundred and thirty-four to one hundred and thirty-eight and subsection (2) of section one hundred and forty of the Order contained in the Schedule.
25 Geo. 5. c. ii	The Aberdeen Corporation Order Confirmation Act, 1934.	Section one hundred and twenty-four of the Order contained in the Schedule in so far as it relates to section one hundred and fifty-six of the Aberdeen Police and Waterworks Act, 1862.



## PART II.

ENACTMENTS REPEALED AS FROM TWO YEARS AFTER THE PASSING  
OF THIS ACT.

Session and Chapter.	Short Title.	Extent of Repeal.
10 & 11 Vict. c. 89	The Town Police Clauses Act, 1847.	Section thirty-three.
25 & 26 Vict. c. cccii.	The Aberdeen Police and Waterworks Act, 1862.	Section one hundred and fifty-seven, and section one hundred and fifty-eight so far as relating to fires beyond the limits of the Act.
25 & 26 Vict. c. ccv.	The Salford Improvement Act, 1862.	Section two hundred and seventy-three.
28 & 29 Vict. c. 90	The Metropolitan Fire Brigade Act, 1865.	In section thirty the words from "In such case" to "summary manner".
29 & 30 Vict. c. li	The Tynemouth Improvement Act, 1866.	Section forty-six.
29 & 30 Vict. c. cclxxiii.	The Glasgow Police Act, 1866.	Section one hundred and sixty-seven, and section one hundred and sixty-eight so far as relating to fires beyond the City.
38 & 39 Vict. c. 55	The Public Health Act, 1875.	Paragraph (2) of section one hundred and seventy-one so far as it incorporates section thirty-three of the Town Police Clauses Act, 1847.
45 & 46 Vict. c. clxxv.	The Dundee Police and Improvement Consolidation Act, 1882.	Section two hundred and thirty-five in so far as it incorporates section three hundred and forty-seven of the General Police and Improvement (Scotland) Act, 1862.
55 & 56 Vict. c. 55	The Burgh Police (Scotland) Act, 1892.	Section two hundred and ninety-eight.
8 Edw. 7. c. 62 -	The Local Government (Scotland) Act, 1908.	Subsections (4) and (5) of section eight.
9 Edw. 7. c. cxxix	The Greenock Corporation Act, 1909.	Section three hundred and eighty-four in so far as relating to section two hundred and ninety-eight of the Burgh Police (Scotland) Act, 1892.
20 & 21 Geo. 5. c. clxxvii.	The Glasgow Corporation Act, 1930.	Section thirty-nine in so far as it relates to sections one hundred and sixty-seven and one hundred and sixty-eight of the Glasgow Police Act, 1866.
22 & 23 Geo. 5. c. xli.	The Dundee Corporation Order Confirmation Act, 1932.	Section forty-nine of the Order contained in the Schedule in so far as it relates to section three hundred and forty-seven of the General Police and Improvement (Scotland) Act, 1862.
24 & 25 Geo. 5. c. v	The Edinburgh Corporation Order Confirmation Act, 1933.	Subsections (1) and (3) of section one hundred and forty of the Order contained in the Schedule.
25 & 26 Geo. 5. c. ii.	The Aberdeen Corporation Order Confirmation Act, 1934.	Section one hundred and twenty-four of the Order contained in the Schedule in so far as it relates to sections one hundred and fifty-seven and one hundred and fifty-eight of the Aberdeen Police and Waterworks Act, 1862.

## ORDERS, CIRCULARS AND MEMORANDA

## PENSION REGULATIONS

*Provisional Regulations**December 16, 1938*

99973

The Minister of Health hereby certifies under section 2 of the Rules Publication Act, 1893, that on account of urgency the following Regulations should come into immediate operation, and in exercise of the powers conferred on him by paragraph (a) of subsection (4) of section 17 of the Fire Brigades Act, 1938, and of all other powers enabling him in that behalf, hereby makes the following Regulations to come into operation forthwith as provisional regulations :—

1. These Regulations may be cited as the Fire Brigade Pensions Regulations, 1938.

2.—(1) In these Regulations the following expressions have the respective meanings hereby assigned to them :—

“ the Act of 1938 ” means the Fire Brigades Act, 1938 ;

“ the Act of 1925 ” means the Fire Brigade Pensions Act, 1925 ;

“ the Act of 1922 ” means the Local Government and other Officers' Superannuation Act, 1922.

(2) The Interpretation Act, 1889, applies to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

3. Any person who, being at the passing of the Act of 1938 the holder of a post by virtue of which he was or was being treated as subject to the Act of 1922, became by virtue of section 17 of the Act of 1938 a professional fireman and who, by reason of his not exercising his option under subsection (3) of that section, becomes a person to whom the Act of 1925 applies and is deemed to have applied as from the passing of the Act of 1938 shall be entitled to reckon as a period of approved service for the purpose of the grant of pensions, allowances and gratuities under the Act of 1925 three-quarters of the aggregate length of the following periods of service, namely—

(a) the total period of all service with any local authority which immediately before the passing of the Act of 1938 he was entitled to reckon as contributing service for the purposes of the Act of 1922 ; and

(b) one half the total period of all (if any) service with any local authority which immediately before the passing of the Act of 1938 he was entitled to reckon as non-contributing service for the purposes of the Act of 1922 :

Provided that if any such previous service was part-time service the period thereof shall be treated as though it were whole-time service for a proportionately reduced period. [167]

## CASES

*Negligence — Highway — Light-controlled Crossing — Fire Engine — Disobedience to Traffic-lights—Traffic Signs (Size, Colour and Type) Provisional Regulations, 1933, Reg. 28.*

A fire engine proceeding to a fire came to a light-controlled crossing when the lights were against it. The driver, who had been sounding his gong in the usual way, seeing no vehicle upon the crossing, proceeded to cross in disobedience to the red light. Plaintiff in his car, coming along the road at right angles, with the lights in his favour, passed on to the crossing and collided with the fire engine. It was contended that, as a driver is bound by the regulations, even when the lights are in his favour, to have due regard to the safety of other users of the road, plaintiff should have given way to the fire engine :—

*Held* : the accident was caused solely by the negligence of the driver of the fire engine.—WARD *v.* LONDON COUNTY COUNCIL, [1938] 2 All E. R. 341 ; 82 Sol. Jo. 274 ; 36 L. G. R. 340. [168]

## FIREMEN

*See FIRE PROTECTION*

## FOOD AND DRUGS

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## STATUTES

### THE FOOD AND DRUGS ACT, 1938

(1 & 2 Geo. 6, c. 56)

#### PRELIMINARY NOTE

THIS Act is a consolidating Act, repealing and re-enacting in one statute, with certain amendments and additions, the provisions of a number of miscellaneous Acts relating to food and drugs. Such enactments include, in addition to the Food and Drugs (Adulteration) Act, 1928, the Knackers Acts, 1786 and 1844, the Bread Act, 1836, part of the Public Health

Act, 1875, the Milk and Dairies (Consolidation) Act, 1915, the Milk and Dairies (Amendment) Act, 1922, the Artificial Cream Act, 1929, and part of the Public Health (London) Act, 1936. The provisions of the last-mentioned Act which are re-enacted in the present Act are made to apply generally instead of to London only. There are also included in the new Act several provisions taken from the Markets and Fairs Clauses Act, 1847, but these do not apply to London.

This Act is divided into six Parts. Part I, which re-enacts parts of the Food and Drugs (Adulteration) Act, 1928, and also introduces certain provisions from the Public Health (London) Act, 1936, deals with the composition of food and drugs, unsound food, measures to prevent the contamination of food, notification of food poisoning, and sale of meat from knackers' yards. Part II, which re-enacts parts of the Milk and Dairies (Consolidation) Act, 1915, the Milk and Dairies (Amendment) Act, 1922, and the Artificial Cream Act, 1929, deals with milk and dairies and artificial cream. Part III, which relates to bread, flour, margarine, butter, ice-cream, horseflesh, and shell-fish, re-enacts provisions which were formerly contained in the Bread Act, 1836, the Food and Drugs (Adulteration) Act, 1928, the Sale of Horseflesh, etc., Regulation Act, 1889, the Public Health (Cleansing of Shell-fish) Act, 1932, and the Public Health (London) Act, 1936. Part IV, which contains provisions as to the importation of food, replaces provisions formerly contained in the Food and Drugs (Adulteration) Act, 1928. Part V, which deals with markets, slaughterhouses, and cold-air stores, adopts and applies to local authorities outside London who are market authorities under the Act many of the provisions of the Markets and Fairs Clauses Act, 1847, and certain provisions in the Towns Improvement Clauses Act, 1847, and replaces, as regards such authorities, the Markets and Fairs (Weighing of Cattle) Acts, 1887, 1891, and 1926. Part V also replaces part of the Public Health Act, 1875, and, as regards cold-air stores, s. 71 of the Public Health Act, 1925. Part VI deals with the administration of the Act, legal proceedings and other miscellaneous matters. The repeals effected by the Act include, in addition to the enactments already mentioned, a number of old statutes such as the Adulteration of Tea and Coffee Act, 1724, the Adulteration of Hops Act, 1733, and part of the Apothecaries Act, 1815, the provisions of which have now become obsolete. The Food and Drugs authorities under the present Act differ slightly from the Food and Drugs authorities under the Food and Drugs (Adulteration) Act, 1928, and include for the first time an urban district council where the urban district has a population of 40,000 or upwards; see s. 64, *post*. [169]

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*An Act to consolidate with amendments certain enactments relating to food, drugs, markets, slaughter-houses and knackers' yards. [170]*  
[29th July, 1938.]

**PART I.****GENERAL PROVISIONS AS TO FOOD AND DRUGS.***Composition of food and drugs.*

**1. Restrictions on the addition of other substances to any food or drug.**—(1) No person shall add, or direct or permit any other person to add—

(a) any substance to any food so as to render the food injurious to health ; or

(b) any substance to any drug so as to affect injuriously the quality or potency of the drug,

with the intent that the food or drug may be sold in that state. [171]

(2) No person shall sell, or have in his possession for the purpose of sale, any food or drug to which any substance has been so added. [172]

(3) A person who contravenes any of the provisions of this section shall be guilty of an offence. [173]

This section replaces s. 1 (1), (2), and (3), of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 884).

For definitions of "food," "drug," and "substance," see s. 100 (1), *post*.

As to when food is deemed to be rendered injurious to health, see, further, s. 7, *post*.

For penalties, see s. 79, *post*.

This section relates to adulteration, while s. 3, *infra*, relates to deficiencies in quality. Under the replaced provisions the penalty for an offence under s. 1 was heavier than for an offence under s. 2, but in the present Act they are the same.

As to whether a "person" includes an incorporated body, see *Pearks, Gunston & Tee, Ltd. v. Ward, Hennen v. Southern Counties Dairies Co.*, [1902] 2 K. B. 1, and the other cases in the English and Empire Digest, Vol. 25, p. 81.

**2. Restrictions on the abstraction from any food of any constituent thereof.**—(1) No person shall abstract, or direct or permit any other person to abstract, from any food any constituent thereof so as to affect injuriously the nature, substance or quality of the food with intent that it may be sold in its altered state—

(a) without notice to the purchaser of the alteration ; or

(b) whether with or without such notice, if in that state the food does not comply with any relevant provisions contained in regulations made under this Act for prescribing the composition of food. [174]

(2) A person who contravenes any of the provisions of this section shall be guilty of an offence. [175]

This section replaces s. 5 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 887).

For definition of "food," see s. 100 (1), *post*.

For penalties, see s. 79, *post*.

Intent is the essence of the offence under this section, except that where a sale follows abstraction the question of intent becomes immaterial ; see *per Lord Coleridge, C.J.*, in *Dyke v. Gower*, [1892] 1 Q. B. 220 ; 25 Digest 92, 174.

**3. Prohibition against sale of any food or drug not of the nature, substance or quality demanded.**—(1) If a person sells to the prejudice of the purchaser any food or drug which is not of the nature, or not of the substance, or not of the quality, of the food or drug demanded by the purchaser, he shall, subject to the provisions of the next succeeding section, be guilty of an offence. [176]

(2) Where regulations made under this Act contain provisions prescribing the composition of, or prohibiting or restricting the addition of any substance to, any food, a purchaser of that food shall, unless the contrary is proved, be deemed for the purposes of this section to have demanded food complying with the provisions of the regulations. [177]

(3) In proceedings under this section it shall not be a defence to allege that the purchaser bought for analysis or examination and therefore was not prejudiced [178]

This section replaces s. 2 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 885), less the proviso to sub-s. (2) thereof, which is replaced by s. 4, *infra*.

For definitions of "food" and "drug," see s. 100 (1), *post*.

For penalties, see s. 79, *post*; and as to time within which proceedings must be brought, see s. 80, *post*.

*Mens rea* is not a necessary ingredient in the offence; see *Pain v. Boughtwood* (1890), 24 Q. B. D. 353; 25 Digest 92, 172. An employer is responsible for the act of his employee, even if unauthorised; see *Houghton v. Mundy* (1910), 103 L. T. 60; and other cases in the English and Empire Digest, Vol. 25, p. 82.

A purchaser is not prejudiced if the seller brings clearly to his knowledge the fact that the article supplied is not of the nature, substance or quality demanded; see *Preston v. Grant*, [1925] 1 K. B. 177; *Rodbourn v. Hudson*, [1925] 1 K. B. 225; English and Empire Digest, Vol. 25, pp. 83—91.

As to standard of quality, see *White v. Bynater* (1887), 19 Q. B. D. 582; 25 Digest 90, 160; *Bowker v. Woodroffe*, [1928] 1 K. B. 217; Digest Supp.

See, further, the notes to s. 2 of the 1928 Act in 8 Halsbury's Statutes 886.

**4. Defences available in proceedings under section three.**—In proceedings under the last preceding section it shall be a defence for the defendant to prove—

(1) where some substance has been added to the food or drug in question—

(a) in the case of a food, that the substance is not, and its addition has not rendered the food, injurious to health; or, in the case of a drug, that the addition has not affected injuriously the quality or potency of the drug; and

(b) that the addition was not made fraudulently to increase the bulk, weight or measure, or conceal the inferior quality, of the food or drug; and

(c) either—

(i) that the addition was required for the production or preparation of the food or drug as an article of commerce in a state fit for carriage or consumption; or

(ii) that a label satisfying the requirements of the next succeeding section was attached to, or printed on the wrapper or container of, the article sold;

(2) where some constituent has been abstracted from the food or drug in question—

(a) that the abstraction has not rendered the food injurious to health, or, as the case may be, affected injuriously the quality or potency of the drug, and was not made fraudulently to conceal the inferior quality of the food or drug; and

(b) either—

(i) that the abstraction was required for the production or preparation of the food or drug as an article of commerce in a state fit for carriage or consumption; or

(ii) that a label satisfying the requirements of the next succeeding section was attached to, or printed on the wrapper or container of, the article sold;

(3) where the food or drug in question is the subject of a patent in force, that it was supplied in the state required by the specification of the patent;

(4) where the food or drug in question contains some extraneous matter, that the presence of that matter was an unavoidable consequence of the process of collection or preparation;



- (5) that the article supplied was a proprietary medicine and was supplied in response to a demand for that medicine ;
- (6) where the proceedings are in respect of diluted whisky, brandy, rum or gin, that the spirit in question had been diluted with water only and that its strength was still not lower than thirty-five degrees under proof :

Provided that—

- (a) none of the defences specified in paragraphs (1) to (4) of this section shall be available in the case of any food which does not comply with any relevant provisions contained in regulations made under this Act for prescribing the composition of, or prohibiting or restricting the addition of any substance to, food ; and
- (b) nothing in paragraph (6) of this section affects the provisions of section fourteen of the Finance Act, 1935, with respect to the dilution of spirits after computation of duty. [179]

This section and s. 5, *infra*, replace s. 4 and the proviso to sub-s. (2) of s. 2 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 885, 887).

For definitions of "food," "drug," and "substance," see s. 100 (1), *post*.

For the Finance Act, 1935, s. 14, see 23 Halsbury's Statutes 819.

For further provisions as to labels, see s. 5, *infra*, and s. 6, *post*.

As to accidental introduction of deleterious matter, see *Goulden v. Rook*, [1901] 2 K. B. 290, 298 ; 25 Digest 80, 96.

**5. Provisions as to labels.**—(1) A label shall afford no defence under sub-paragraph (c) (ii) of paragraph (1) or sub-paragraph (b) (ii) of paragraph (2) of the last preceding section unless the following requirements are satisfied :—

- (a) the label must state explicitly what substance has been added to, or what constituent has been abstracted from, the food or drug ; and
- (b) it must be of adequate size, and have the notice of addition or abstraction distinctly and legibly printed and conspicuously visible. [180]

(2) Notwithstanding anything in the preceding subsection, the requirements thereof shall, as respects a mixture, be deemed to be satisfied by a label which has been continuously in use without any material variation since the first day of January eighteen hundred and ninety-three and bears a statement to the effect that the article in question is mixed, or by a label which has been continuously in use without any material variation since the first day of October nineteen hundred and thirty-two and bears such a statement distinctly and legibly printed and unobscured by other matter on the label. [181]

As to the sufficiency of the label, see *Clifford v. Battley*, [1915] 1 K. B. 581 ; 25 Digest 85, 129.

See also notes to s. 4, *supra*.

**6. Labels and advertisements describing incorrectly food or drugs.**—

(1) A person who gives with any food or drug sold by him a label, whether attached to or printed on the wrapper or container or not, which falsely describes that food or drug, or is otherwise calculated to mislead as to its nature, substance or quality, shall be guilty of an offence, unless he proves that he did not know, and could not with reasonable diligence have ascertained, that the label was of such a character as aforesaid. [182]

(2) A person who publishes, or is a party to the publication of, an advertisement (not being such a label so given by him as aforesaid) which falsely describes any food or drug, or is otherwise calculated to mislead as to its nature, substance or quality, shall be guilty of an offence :

Provided that in proceedings under this subsection it shall be a defence for the defendant to prove either—

- (a) that he did not know, and could not with reasonable diligence have ascertained, that the advertisement was of such a character as aforesaid ; or
- (b) that, being a person whose business it is to publish, or arrange for the publication of, advertisements, he received the advertisement for publication in the ordinary course of business.

In any such proceedings as aforesaid against the manufacturer, producer or importer of the food or drug, it shall rest on the defendant to prove that he did not publish, and was not a party to the publication of, the advertisement. [183]

Sub-s. (1) of this section replaces part of s. 30 (1) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 903). The remainder of this section is new.  
For definitions of " food " and " drug," see s. 100 (1), *post*.  
For penalties, see s. 79, *post*.

**7. Presumptive evidence as to injurious nature of food.**—Where regulations made under this Act contain provisions prohibiting or restricting the addition of any substance to any food, the addition of that substance—

- (a) if made in contravention of any of the regulations which is expressed to be made for the prevention of danger to health, shall ; and
- (b) if made to an amount not exceeding the limit, if any, specified by any of the regulations, shall not,

for the purposes of this Part of this Act be deemed to render the food injurious to health. [184]

This section replaces s. 1 (4) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 884).

### *Regulations as to food.*

**8. Power of Minister of Health to make regulations as to the importation, preparation, storage, sale, delivery, &c. of food.**—(1) The Minister of Health (hereafter in this Act referred to as " the Minister ") may, subject to the provisions of this section, make regulations (in this Act referred to as " Food Regulations ") for all or any of the purposes mentioned in any of the following paragraphs, that is to say :—

- (a) authorising measures to be taken for the prevention of danger to health from the importation, preparation, transport, storage, exposure for sale, and delivery of food of various kinds intended for sale or sold for human consumption ;
- (b) requiring wrappers or containers enclosing or containing food of various kinds to be labelled or marked in accordance with the regulations ;

(c) prohibiting or restricting the addition of any substance to, and regulating generally the composition of, any food. [185]

(2) Regulations shall not be made under this section with respect to bread or flour. [186]

(3) Regulations for any of the purposes mentioned in paragraph (b) or paragraph (c) of subsection (1) of this section may be made with respect to cream, but, save as aforesaid, regulations shall not be made under this section with respect to milk. [187]

(4) Regulations shall not be made for any of the purposes mentioned in the said paragraph (c) unless they are expressed to be in the opinion of the Minister necessary or expedient for preventing danger to health or loss of nutritional value, or otherwise for protecting purchasers. [188]

This section replaces s. 1 of the Public Health (Regulations as to Food) Act, 1907 (8 Halsbury's Statutes 862), and s. 7 (2) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 889).

See, further, s. 92, *post*.

### *Unsound food.*

**9. Penalty for sale, &c. of unsound food.**—(1) A person who—

(a) sells, or offers or exposes for sale, or has in his possession for the purpose of sale or of preparation for sale; or

(b) deposits with, or consigns to, any person for the purpose of sale or of preparation for sale,

any food intended for, but unfit for, human consumption shall, subject to the provisions of this section, be guilty of an offence. [189]

This subsection replaces part of s. 117 of the Public Health Act, 1875 (13 Statutes 673) (as extended by s. 28 of the Public Health Acts Amendment Act, 1890 (13 Statutes 835)), and s. 180 (2) of the Public Health (London) Act, 1936 (30 Statutes 543).

For definition of "food," see s. 100 (1), *post*.

As to exposure for sale, see *Bothamley v. Jolly*, [1915] 3 K. B. 425; 25 Digest 109, 335; and as to "possession," see *Webb v. Baker*, [1916] 2 K. B. 753; 25 Digest 110, 346.

As to deposit for the purpose of sale, see *Ollett v. Henry*, [1919] 2 K. B. 88; 25 Digest 110, 343.

As to whether food is intended for human consumption, see *Wieland v. Butler-Hogan* (1904), 73 L. J. (K. B.) 513; 25 Digest 111, 353.

As to the onus of proof, see *Cant v. Harley & Sons, Ltd.*, [1938] 2 All E. R. 768; Digest Supp.

See, further, the cases in the English and Empire Digest, Vol. 25, pp. 109 *et seq*.

(2) Where food in respect of which an offence under paragraph (a) of the preceding subsection has been committed was sold to the offender by some other person, that person also shall, subject to the provisions of this section, be guilty of an offence. [190]

This and the next following subsection replace (as regards London) s. 180 (3) of the Public Health (London) Act, 1936 (30 Halsbury's Statutes 543).

(3) Where a person is charged with an offence under paragraph (b) of subsection (1) of this section or under the last preceding subsection, it shall be a defence for him to prove either that he gave notice to the person with whom he deposited, or to whom he consigned or sold, the food in question that it was not intended for human consumption, or that, at the time when he delivered or dispatched it to that person, either it was fit for human consumption or he did not know, and could not with reasonable diligence have ascertained, that it was unfit for human consumption. [191]

See note to sub-s. (2), *supra*.

(4) A person guilty of an offence under this section shall be liable to a fine not exceeding fifty pounds, or to imprisonment for a term not exceeding three months, or to both such a fine and such imprisonment. [192]

(5) If a person licensed under this Act, or the Public Health (London) Act, 1936, to keep a slaughter-house is convicted of an offence under this section, the court may, in addition to any other penalty, cancel his licence. [193]

This subsection replaces s. 31 of the Public Health Acts Amendment Act, 1890 (13 Halsbury's Statutes 836), and s. 180 (5) of the Public Health (London) Act, 1936 (30 Halsbury's Statutes 543).

(6) The justice of the peace before whom any food is brought under the next succeeding section may, but need not, be a member of the court before which a person is charged with an offence under this section in relation to that food. [194]

This subsection replaces part of s. 117 of the Public Health Act, 1875 (13 Halsbury's Statutes 673), and, as regards London, s. 180 (7) of the Public Health (London) Act, 1936 (30 Halsbury's Statutes 543).

**10. Examination of food and seizure of unsound food.**—(1, An authorised officer of a local authority may at all reasonable times examine any food intended for human consumption which has been sold, or is offered or exposed for sale, or is in the possession of, or has been deposited with or consigned to, any person for the purpose of sale or of preparation for sale, and, if it appears to him to be unfit for human consumption, may seize it and remove it in order to have it dealt with by a justice of the peace. [195]

This subsection replaces s. 116 of the Public Health Act, 1875 (13 Halsbury's Statutes 672) (as extended by s. 28 of the Public Health Acts Amendment Act, 1890 (13 Halsbury's Statutes 835)), and, as regards London, s. 180 (1) of the Public Health (London) Act, 1936 (30 Halsbury's Statutes 542).

For meaning of "local authority," see s. 64, *post*; and for definitions of "authorised officer" and "food," see s. 100 (1), *post*.

(2) An officer who seizes any food under the preceding subsection shall inform the person in whose possession it was found of his intention to have it dealt with by a justice of the peace, and any person who under the last preceding section might be liable to a prosecution in respect of the food shall, if he attends before the justice upon the application for its condemnation, be entitled to be heard and to call witnesses. [196]

(3) If it appears to a justice of the peace that any food brought before him, whether seized under the provisions of this section or not, is unfit for human consumption, he shall condemn it and order it to be destroyed, or to be so disposed of as to prevent it from being used for human consumption. [197]

This subsection replaces part of s. 117 of the Public Health Act, 1875 (13 Halsbury's Statutes 673) (as extended by s. 28 of the Public Health Acts Amendment Act, 1890 (13 Halsbury's Statutes 835)), and, as regards London, part of s. 180 (2) of the Public Health (London) Act, 1936 (30 Halsbury's Statutes 543).

(4) If a justice of the peace refuses to condemn any food seized under this Part of this Act by an authorised officer of a local authority, the authority shall compensate the owner of the food for any depreciation in its value resulting from its seizure and removal. [198]

**11. Provisions as to food offered as prizes, &c.**—(1) The foregoing provisions relating to unsound food shall apply in relation to any food which is intended for human consumption and is—

- (a) offered as a prize or reward in connection with any entertainment to which the public are admitted, whether on payment of money or not; or
- (b) offered as a prize or reward or given away for the purpose of advertisement, or in furtherance of any trade or business; or
- (c) exposed or deposited in any premises for the purpose of being so offered or given away as aforesaid,

as if that food were, or had been, exposed for sale—

- (i) in a case falling within paragraph (a), by each person concerned in the organisation of the entertainment;
- (ii) in a case falling within paragraph (b), by the person offering or giving away the food;
- (iii) in a case falling within paragraph (c), by the occupier of the premises in question. [199]

This subsection replaces s. 180 (10) of the Public Health (London) Act, 1936 (30 Halsbury's Statutes 544).

For definition of "food," see s. 100 (1), *post*.

(2) In this section the expression "entertainment" includes any social gathering, amusement, exhibition, performance, game, sport or trial of skill. [200]

This subsection replaces part of s. 180 (11) of the Public Health (London) Act, 1936 (30 Halsbury's Statutes 544).

**12. Power to examine food in course of transit.**—If an authorised officer of a local authority has reason to suspect that any cart, barrow or other vehicle, or any container contains any food intended for sale for human consumption, or in the course of delivery after sale for human consumption, he may examine the contents of the vehicle, or, as the case may be, of the container, and for that purpose may, if necessary, detain the vehicle or the container, and, if he finds any food which appears to him to be intended for, but unfit for, human consumption, he may deal with it as food falling within subsection (1) of section ten of this Act and subsections (2) to (4) of that section shall apply accordingly:

Provided that—

- (a) nothing in this section shall authorise the examination of the contents of—

- (i) any vehicle belonging to a railway company and used by them for the purposes of their undertaking; or

- (ii) any authorised vehicle used for the purpose of his business as a carrier of goods by a person holding an A licence or a B licence under Part I of the Road and Rail Traffic Act, 1933; or

- (iii) any container in the possession of a railway company or of any such person as aforesaid as carriers or carrier thereof; and



- (b) where the duties of an officer of customs and excise with respect to any goods have not been wholly discharged, nothing in this section shall authorise the examination of those goods without his consent. [201]

This section is new.

For the Road and Rail Traffic Act, 1933, Part I, see 26 Halsbury's Statutes 872.

For meaning of "local authority," see s. 64, *post*; and for definitions of "authorised officer" and "food," see s. 100 (1), *post*.

*Precautions against contamination of food.*

**13. Provisions as to rooms where food intended for sale is prepared or stored, &c.**—(1) Subject to the provisions of this section, the following provisions shall have effect in relation to every room in which any food intended for human consumption, other than milk, is prepared for sale or sold, or offered or exposed for sale, or deposited for the purpose of sale or of preparation for sale, that is to say—

- (a) no sanitary convenience, dustbin or ashpit shall be within, or communicate directly with, the room, or be so placed that offensive odours therefrom can penetrate into the room;
- (b) no cistern for the supply of water to the room shall be in direct communication with, or discharge directly into, a sanitary convenience, and there shall not be within the room any outlet for the ventilation of a drain, or, except with the approval of the local authority, an inlet into any drain conveying sewage or foul water;
- (c) the walls, ceiling, floor, windows and doors of the room shall be kept in a proper state of repair;
- (d) the walls, ceiling and doors of the room shall be painted, white-washed, cleansed, or purified as often as may be necessary to keep them clean and the windows of the room shall be kept clean;
- (e) the room shall not be used as a sleeping place, and, so far as may be necessary to prevent risk of infection or contamination of food in the room, no sleeping place adjoining the room shall communicate therewith except through the open air, or through an intervening ventilated space;
- (f) except in the case of an artificially refrigerated room, suitable and sufficient means of ventilation shall be provided and suitable and sufficient ventilation shall be maintained;
- (g) no refuse or filth, whether solid or liquid, shall be deposited or allowed to accumulate in the room, except so far as may be necessary for the proper carrying on of the trade or business for which the room is used, and the floor of the room shall be cleansed as often as may be necessary to keep it clean;
- (h) cleanliness shall be observed by persons employed in the room, both in regard to the room and all articles, apparatus and utensils therein, and in regard to themselves and their clothing; and
- (i) there shall be provided in, or within reasonable distance of, the room suitable washing basins and a sufficient supply of soap, clean towels, and clean water, both hot and cold, for the use of persons employed in the room:

Provided that paragraph (i) of this subsection shall not apply in relation to a room which is used for the sale or storage, or for the sale and storage, of food contained in containers of such materials, and so closed, as to exclude all risk of contamination, but is not otherwise used for any purpose in connection with the preparation, storage or sale of food. [202]

(2) If, in the case of a room to which the preceding subsection applies—

- (a) any of the requirements of that subsection are not complied with ; or
- (b) any person does or permits any act or thing in contravention of that subsection, or fails to take all such steps as may be reasonably necessary to prevent risk of contamination of food in the room ; or
- (c) any person prevents the owner of the room from executing any work necessary to make the room comply with the said requirements,

then, in the first-mentioned case, the occupier of the room and, in the other cases mentioned, the person in question, whether he be the occupier or not, shall be liable to a fine not exceeding twenty pounds and to a further fine not exceeding five pounds for each day during which the offence continues after conviction therefor. [203]

(3) If, in the case of a room to which subsection (1) of this section applies, any of the requirements specified in paragraphs (a), (b), (c) or (f) of that subsection is not complied with, then, in so far as that requirement is of a structural character, the owner of the room shall, if he let it for the purpose of being used for the preparation, sale or storage of food, or, if not having so let it, he permits it to be so used after receiving notice from the local authority, be liable to the penalty mentioned in the last preceding subsection, but without prejudice to the liability of the occupier under that subsection. [204]

(4) Where the owner of a room who did not let it for the purpose of being used for the preparation, sale or storage of food executes any work necessary to make the room comply with the requirements of subsection (1) of this section, he may recover the expenses incurred by him in so doing from the occupier of the room summarily as a civil debt. [205]

(5) In this section, the expression “ room ” includes a shop or cellar or any other part of a building, and a shed, store or outbuilding or any part thereof, and the provisions of this section, except paragraphs (e) and (f) of subsection (1) thereof, shall, so far as applicable, apply in relation to a yard, forecourt or area as they apply in relation to a room. [206]

(6) Save in so far as may be expressly provided by Food Regulations, neither this nor the next succeeding section shall apply in relation to premises which are used for the preparation, sale or storage of articles prepared from, or consisting of, materials other than those of animal or vegetable origin, but are not otherwise used for any purpose in connection with the preparation, storage or sale of food. [207]

This section replaces and makes of general application s. 181 of the Public Health (London) Act, 1936 (30 Halsbury's Statutes 544).

For definition of “ food,” see s. 100 (1), *post*.

As to Food Regulations, see s. 8, *ante*.

**14. Registration of premises used in connection with the manufacture or sale of ice-cream, or preserved food, &c.**—(1) Subject to the provisions of this section, and of subsection (6) of the last preceding section, no premises shall be used for—

- (a) the sale, or the manufacture for the purpose of sale, of ice-cream, or the storage of ice-cream intended for sale; or
- (b) the preparation or manufacture of sausages or potted, pressed, pickled or preserved food intended for sale,

unless they are registered under this section for that purpose by the local authority, and a person who uses any premises in contravention of the provisions of this subsection shall be guilty of an offence.

For the purposes of this subsection, the preparation of meat or fish by any process of cooking shall be deemed to be the preservation thereof. [208]

For penalties for an offence, see s. 79, *post*.

(2) Subject to the following provisions of this section, the local authority shall, on the application of the occupier of, or of a person proposing to occupy, any premises, register those premises for the purposes of this section. [209]

(3) If it appears to the local authority that any premises for the registration of which application has been made under this section, or which are registered under this section, do not satisfy the requirements of the last preceding section, or are otherwise unsuitable for use for the purpose for which they are proposed to be used or are being used, the authority shall serve on the applicant for registration or, as the case may be, on the occupier for the time being of the premises, a notice stating the place and time, not being less than seven days after the date of the service of the notice, at which they propose to take the matter into consideration and informing him that he may attend before them, with any witnesses whom he desires to call, at the place and time mentioned to show cause why the authority should not, for reasons specified in the notice, refuse the application or, as the case may be, cancel the registration of the premises. [210]

(4) If a person on whom a notice is served under the last preceding subsection fails to show cause to the satisfaction of the local authority, they may refuse the application or, as the case may be, cancel the registration of the premises, and shall forthwith give notice to him of their decision in the matter, and shall, if so required by him within fourteen days of their decision, give to him within forty-eight hours a statement of the grounds on which it was based. [211]

(5) A person aggrieved by the decision of a local authority under this section to refuse to register any premises, or to cancel the registration of any premises, may appeal to a court of summary jurisdiction. [212]

(6) Upon any change in the occupation of premises registered under this section, the incoming occupier shall, if he intends to use them for the purpose for which they are registered, forthwith give notice of the change to the local authority, who shall thereupon make any necessary alteration in their register.

If a person required to give a notice under this subsection fails to do so, he shall be liable to a fine not exceeding five pounds. [213]

(7) This section shall not apply in relation to premises used primarily as a club, hotel, inn or restaurant, and in relation to premises used as a theatre, cinematograph theatre, music hall or concert hall shall have effect as if in paragraph (a) of subsection (1) the words "the sale, or" and the words "or the storage of ice-cream intended for sale" were omitted. [214]

(8) If at the commencement of this Act local Act provisions with respect to the registration of premises used for any of the purposes mentioned in subsection (1) of this section were in force in a district, this section shall not apply to that district until the Minister, on the application of the local authority, declares it to be in force therein. [215]

(9) Where on an application made by a local authority under the last preceding subsection the Minister declares this section to be in force in the district of the authority, then, upon the declaration taking effect, such of the local Act provisions as may be specified in the declaration shall be repealed or, as the case may be, shall be repealed as respects the district of the authority, but any premises which immediately before the repeal of those provisions were registered thereunder for any purpose mentioned in subsection (1) of this section shall be deemed to have been registered under this section for that purpose. [216]

This section replaces and makes of general application s. 187 of the Public Health (London) Act, 1938 (30 Halsbury's Statutes 550).

For meaning of "local authority," see s. 64, *post*.

The Minister is the Minister of Health; see s. 100 (1), *post*.

**15. Byelaws with respect to the handling, wrapping, &c. of food, and the sale of food in the open air.**—(1) A local authority may make byelaws for securing the observance of sanitary and cleanly conditions and practices in connection with the handling, wrapping and delivery of food sold or intended for sale for human consumption, and in connection with the sale or exposure for sale in the open air of food intended for human consumption :

Provided that in London the authority to make byelaws under this section shall be—

- (a) as respects the City of London, the Common Council; and
- (b) as respects the rest of London, the county council. [217]

(2) Byelaws made under this section by the London County Council may be made to apply to the whole or any part of London outside the City and it shall be the duty of every local authority to enforce within their district any byelaws so made. [218]

(3) If and so far as a byelaw made under this section is inconsistent with any regulation made under this Act, the latter shall prevail. [219]

(4) An authority who propose to apply to the Minister for confirmation of any byelaws made under this section shall, in addition to complying with any other statutory requirements, publish in the London Gazette at least one month before the application is made notice of their intention to apply for confirmation. [220]

This section replaces and makes of general application s. 183 of the Public Health (London) Act, 1938 (30 Halsbury's Statutes 546).

For meaning of "local authority," see s. 64, *post*.

**16. Notices to be displayed by persons selling ice-cream, &c. from stalls, carts, baskets, &c.**—(1) Every dealer in ice-cream who in a street or other place of public resort sells, or offers or exposes for sale, ice-cream from a stall, or from a cart, barrow or other vehicle, or from a basket, pail, tray or other container used without a stall or vehicle, shall have his name and address legibly and conspicuously displayed on the stall, vehicle or container, as the case may be, and, if he fails to comply with the requirements of this section, shall be liable to a fine not exceeding forty shillings. [221]

This subsection replaces and makes of general application s. 189 of the Public Health (London) Act, 1936 (30 Halsbury's Statutes 552).

(2) A local authority may at any time resolve that, as from such date, not being less than four weeks from the passing of the resolution, as may be specified therein and until the resolution is revoked, this section shall apply within their district in relation to all kinds of food, or to any kinds of food specified in the resolution, as it applies in relation to ice-cream, and while any such resolution is in force, this section shall apply accordingly :

Provided that nothing in this subsection shall have effect in relation to milk. [222]

For meaning of "local authority," see s. 64, *post*.

(3) A local authority shall forthwith give notice to the Minister of the passing or revocation of a resolution under this section, and shall take such steps as he may direct for publishing notice of the coming into operation, or revocation, of any such resolution. [223]

### *Food poisoning.*

**17. Notification of cases of food poisoning.**—(1) If a registered medical practitioner becomes aware, or suspects, that a patient whom he is attending within the district of any local authority is suffering from food poisoning, he shall forthwith send to the medical officer of health of that district a certificate stating—

- (a) the name, age and sex of the patient, and the address of the premises where the patient is ; and
- (b) particulars of the food poisoning from which he is, or is suspected to be, suffering,

and also stating whether the case occurs in the private practice of the practitioner, or in his practice as medical officer of a public body or institution. [224]

(2) A local authority shall pay to a registered medical practitioner for each certificate duly sent by him under the preceding subsection to their medical officer of health a fee of two shillings and sixpence if the case occurs in his private practice, and a fee of one shilling if it occurs in his practice as medical officer of any public body or institution. [225]

(3) Where the medical practitioner attending a patient is himself the medical officer of health of the district, he shall be entitled to the fee to which, if he were not the medical officer of health, he would have been entitled in respect of a certificate sent by him to the medical officer. [226]



(4) Notwithstanding any enactment which in London might entail such a disqualification, the acceptance by a medical practitioner of a fee under this section shall not subject him to disqualification for being a member of any authority or holding any other public office. [227]

This section replaces and makes of general application s. 182 of the Public Health (London) Act, 1936 (30 Halsbury's Statutes 545).

For meaning of "local authority," see s. 64, *post*.

**18. Provisions as to suspected food.**—(1) If the medical officer of health of a district has reasonable ground for suspecting that any food of which he, or any other officer of the local authority of the district, has procured a sample under the provisions of this Act is likely to cause food poisoning, he may give notice to the person in charge of the food that, until his investigations are completed, the food, or any specified portion thereof, is not to be used for human consumption and either is not to be removed, or is not to be removed except to some place specified in the notice.

A person who uses or removes any food in contravention of the requirements of a notice given under this subsection shall be liable to a fine not exceeding ten pounds. [228]

(2) If, as a result of his investigations, the medical officer is satisfied that the food in question, or any portion thereof, is likely to cause food poisoning, he may deal with it as food falling within subsection (1) of section ten of this Act and subsections (2) and (3) of that section shall apply accordingly, but, if he is satisfied that it may safely be used for human consumption, he shall forthwith withdraw his notice. [229]

(3) If a notice given under subsection (1) of this section is withdrawn by the medical officer of health, or if the justice of the peace before whom any food is brought under this section refuses to condemn it, the local authority shall compensate the owner of the food to which the notice related for any depreciation in its value resulting from the action taken by the medical officer. [230]

For definition of "food," see s. 100 (1), *post*; and for meaning of "local authority," see s. 64, *post*.

As to compensation, see, further, s. 86, *post*.

#### *Meat from knackers' yards.*

**19. No part of an animal slaughtered in a knacker's yard to be sold for human consumption.**—(1) No person shall sell, or offer or expose for sale, for human consumption any part of an animal which has been slaughtered in a knacker's yard. [231]

(2) A person who contravenes the provisions of this section shall be guilty of an offence and, if he is licensed under this Act, or the Public Health (London) Act, 1936, to keep either a slaughter-house or a knacker's yard, the court may, in addition to any other penalty, cancel his licence. [232]

For the Public Health (London) Act, 1936, see 30 Halsbury's Statutes 437.

For other penalties, see s. 79, *post*.

## **PART II.**

### **PROVISIONS AS TO MILK, DAIRIES AND ARTIFICIAL CREAM.**

#### *Milk and Dairies.*

**20. Milk and Dairies Regulations.**—(1) The Minister may make regulations (in this Act referred to as "Milk and Dairies Regulations")

for all or any of the purposes mentioned in any of the following paragraphs, that is to say—

- (a) for the registration of persons carrying on, or proposing to carry on, the trade of a dairyman and the registration of dairies, and prohibiting any person from carrying on the said trade unless he and any premises used by him as a dairy are duly registered ;
- (b) for the inspection of dairies, and of persons in or about dairies who have access to the milk, or to the churns or other milk vessels ;
- (c) with respect to the lighting, ventilation, cleansing, drainage, and water supply of dairies ;
- (d) for securing the cleanliness of churns and other milk vessels and appliances ;
- (e) prescribing the precautions to be taken for protecting milk against infection or contamination ;
- (f) for preventing danger to health from the sale of infected, contaminated, or dirty milk, and in particular for prohibiting the supply or sale of milk suspected of being infected ;
- (g) imposing obligations on dairymen and their employees in regard to cases of infectious illness ;
- (h) regulating the cooling, conveyance, and distribution of milk ;
- (i) with respect to the labelling, marking, or identification, and the sealing or closing, of churns and other vessels used for the conveyance of milk, the labelling of vessels in which milk is sold or offered or exposed for sale or delivered, and the display of the vendor's name and address on any stall, or any cart, barrow or other vehicle, from which milk is sold or delivered ;
- (j) in cases where no express provision is made by this Act, prohibiting or restricting—
  - (i) the addition of any substance to, or the abstraction of fat or any other constituent from, milk ;
  - (ii) the sale of milk to which any such addition, or from which any such abstraction, has been made, or which has been otherwise artificially treated ;
- (k) for preventing danger to health from the importation of milk.

In this subsection the expression “milk” means milk intended for sale or sold for human consumption, or intended for manufacture into products for sale for human consumption. [233]

(2) Regulations made under paragraph (i) or paragraph (j) of the preceding subsection shall not apply in relation to cream in so far as they are made for any purpose for which regulations with respect to cream may be made under paragraph (b) or paragraph (c) of subsection (1) of section eight of this Act. [234]

(3) Regulations made under this section may be general regulations or regulations limited to a specified area. [235]

This section replaces s. 1 (1) of the Milk and Dairies (Consolidation) Act, 1915 (8 Halsbury's Statutes 864), and s. 8 (1) of the Milk and Dairies (Amendment) Act, 1922 (8 Halsbury's Statutes 882).

The Minister is the Minister of Health ; see s. 100 (1), *post*.

See, further, s. 92, *post*.

As to registration, see *Easington R.D.C. v. Gilson* (1929), 94 J. P. 56 ; Digest Supp.

**21. Use of special designations in connection with milk.**—(1) Milk and Dairies Regulations may contain provisions for all or any of the purposes mentioned in any of the following paragraphs, that is to say—

- (a) prescribing, in relation to milk of any description, such designation (hereinafter referred to as a “special designation”) as the Minister considers appropriate;
- (b) providing, as respects any special designation, for the granting by the Minister, or by county councils or local authorities, of licences to producers and purveyors of milk authorising the use of that special designation;
- (c) prescribing the periods for which, and the conditions (including conditions as to the payment of fees) subject to which, licences, or licences of any particular class, are to be so granted;
- (d) providing for the suspension or revocation of a licence in the event of a breach of any condition subject to which it was granted; and
- (e) entitling any person aggrieved by the refusal, suspension or revocation of a licence by a county council or local authority to appeal to the Minister. [236]

(2) No person shall, for the purpose of the sale or advertisement of any milk—

- (a) use a special designation in any manner calculated to suggest that it refers to that milk, unless he holds a licence authorising the use of that designation in connection with that milk; or
- (b) refer to that milk by any such description, not being a special designation, as is calculated falsely to suggest—
  - (i) that there is in force a licence authorising the use of a special designation in connection with that milk; or
  - (ii) that the milk is tested, approved or graded by any competent person; or
  - (iii) that the cows from which the milk is derived are free from the infection of tuberculosis or of any other disease. [237]

(3) A person who contravenes any of the provisions of the last preceding subsection shall be guilty of an offence, and in any proceedings taken by virtue of paragraph (b) of that subsection it shall rest on the defendant to prove the truth of any suggestion which, in the opinion of the court, his acts or conduct, as proved by the prosecution, are or is calculated to convey. [238]

(4) It shall be the duty, in London, of Food and Drugs authorities and, elsewhere, of councils of counties and county boroughs, to enforce the provisions of subsection (2) of this section, except that in a county district it shall be the duty of the local authority to enforce them in the case of persons who are not producers of milk. [239]

Sub-ss. (1)—(3) of this section replace s. 3 of the Milk and Dairies (Amendment Act, 1922 (8 Halsbury's Statutes 880)), as substituted by s. 10 of the Milk Act, 1934 (27 Halsbury's Statutes 16)). Sub-s. (4) replaces s. 10 (1) of the Milk and Dairies (Amendment) Act, 1922 (8 Halsbury's Statutes 882).

The Minister is the Minister of Health; see s. 100 (1), *post*.

For penalties for an offence, see s. 79, *post*.

For meaning of “Food and Drugs authorities,” see s. 64, *post*.

As to licences, see *United Dairies (London), Ltd. v. Hackney Borough Council* (1934), 98 J. P. 236; Digest Supp. (separate licence required for each shop).

**22. Power to refuse, or cancel, registration of dairymen.**—(1) If it appears to an authority by whom dairymen are registered in pursuance of Milk and Dairies Regulations that the public health is, or is likely to be, endangered by any act or default of a person who has applied to be, or is, registered as a retail purveyor of milk, being an act or default, committed whether within or without the district of the authority, in relation to the quality, storage or distribution of milk, they shall serve on him a notice stating the place and time, not being less than seven days after the date of the service of the notice, at which they propose to take the matter into consideration, and informing him that he may attend before them, with any witnesses whom he desires to call, at the place and time mentioned to show cause why they should not, for reasons specified in the notice, refuse to register him as a retail purveyor of milk, or, as the case may be, cancel his registration as such, either generally or in respect of any specified premises. [240]

This subsection and sub-ss. (2) and (3), *infra*, replace s. 2 (1) of the Milk and Dairies (Amendment) Act, 1922 (8 Halsbury's Statutes 879).

As to the Milk and Dairies Regulations, see s. 20, *ante*.

(2) If a person on whom a notice is served under the preceding subsection fails to show cause to the satisfaction of the authority, they may refuse to register him as a retail purveyor or, as the case may be, cancel his registration as such, and shall forthwith give notice to him of their decision in the matter, and shall, if so required by him within fourteen days of their decision, give to him within forty-eight hours a statement of the grounds on which it was based. [241]

See note to sub-s. (1), *supra*.

(3) A person aggrieved by the decision of an authority under this section to refuse to register him, or to cancel his registration, may appeal to a court of summary jurisdiction. [242]

See note to sub-s. (1), *supra*.

As to who is a person aggrieved, see *Prosser v. Mountain Ash U.D.C.*, [1931] 2 K. B. 132; Digest Supp.

(4) The court before which a person registered as a retail purveyor of milk is convicted of an offence under any of the provisions of this Act relating to milk, or under any Milk and Dairies Regulations may, in addition to any other penalty, cancel his registration as such. [243]

This subsection replaces s. 2 (2) of the Milk and Dairies (Amendment) Act, 1922 (8 Halsbury's Statutes 880).

As to the Milk and Dairies Regulations, see s. 20, *ante*.

For other penalties for offences, see s. 79, *post*.

(5) An authority may require a person who applies to them for registration as a retail purveyor of milk to give to them, before his application is considered, information as to whether he is, or has been, registered as such a purveyor, either in their district or in the district of any other authority, and, if an applicant who is so required gives to the authority any information which is false in any material respect, he shall be guilty of an offence. [244]

See notes to sub-s. (4), *supra*.

(6) Where under this section a person's application for registration as a retail purveyor of milk is refused, or his registration is cancelled, he shall not be liable for any breach of a contract for the purchase of

further supplies of milk from another person, if such refusal or cancellation was due to the quality of milk supplied by that person. [245]

This subsection replaces s. 12 of the Milk and Dairies (Amendment) Act, 1922 (8 Halsbury's Statutes 883).

(7) In London the provisions of this section shall apply also in relation to dairymen who are not retail purveyors of milk as they apply in relation to dairymen who are such purveyors. [246]

### 23. Regulations as to presumptive evidence of adulteration of milk.—

(1) The Minister of Agriculture and Fisheries may make regulations for determining what deficiency in any of the normal constituents of milk, or what proportion of water, in a sample shall for the purposes of this Act raise a presumption, until the contrary is proved, that the article sampled is not genuine milk. [247]

This subsection replaces, so far as concerns milk, s. 7 (1) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 889).

(2) Regulations made under this section shall be laid before Parliament as soon as may be after they are made. [248]

### 24. Certain additions not to be made to milk, and certain liquids not to be sold as milk.—(1) No person shall—

- (a) add any water or colouring matter, or any dried or condensed milk or liquid reconstituted therefrom, to milk intended for sale for human consumption ; or
- (b) add any separated milk, or mixture of cream and separated milk, to unseparated milk intended for such sale ; or
- (c) sell, or offer or expose for sale, or have in his possession for the purpose of sale, for human consumption any milk to which any addition has been made in contravention of the provisions of this subsection. [249]

(2) No person shall sell, or offer or expose for sale, under the designation of milk any liquid in the making of which any separated milk or any dried or condensed milk has been used. [250]

(3) A person who contravenes any of the provisions of this section shall be guilty of an offence. [251]

This section replaces s. 4 of the Milk and Dairies (Amendment) Act, 1922 (8 Halsbury's Statutes 881).

For penalties for an offence, see s. 79, *post* ; and see s. 22 (4), *ante*.

### 25. Prohibition of sale of tuberculous milk, or milk of cows suffering from tuberculosis, &c.—(1) No person shall—

- (a) sell, or offer or expose for sale, for human consumption ; or
- (b) use in the manufacture of products for sale for human consumption,

the milk of any cow which to his knowledge has given tuberculous milk, or is suffering from emaciation due to tuberculosis, or from tuberculosis of the udder or any other disease of cows to which this section applies. [252]

(2) In proceedings under this section, the defendant shall be deemed to have known that a cow had given tuberculous milk, or was so suffering as aforesaid, if he could with ordinary care have ascertained the fact. [253]



(3) A person who contravenes any of the provisions of this section shall be guilty of an offence. [254]

(4) The diseases of cows to which this section applies are those specified in Part I of the First Schedule to this Act and any other disease to which the provisions of this section are extended by Milk and Dairies Regulations. [255]

(5) It shall be the duty of the council of every county and county borough to enforce the provisions of this section. [256]

This section replaces s. 5 of the Milk and Dairies (Consolidation) Act, 1915 (8 Halsbury's Statutes 888); s. 5 of the Milk and Dairies (Amendment) Act, 1922 (8 Halsbury's Statutes 881); and, as regards the enforcement of the last-mentioned section, s. 10 (1) of the last-mentioned Act (8 Halsbury's Statutes 882).

For penalties for an offence, see s. 79, *post*; and see s. 22 (4), *ante*.

As to Milk and Dairies Regulations, see s. 20, *ante*.

**26. Establishment by certain councils of milk depots.**—Where the local authority of a district outside London are not a welfare authority for the purposes of Part VII of the Public Health Act, 1936, they may, with the approval of the Minister, establish depots for the sale, at not less than cost price, of milk specially prepared for consumption by infants under two years of age, and for that purpose may purchase and prepare milk and provide any necessary plant. [257]

This section replaces s. 12 of the Milk and Dairies (Consolidation) Act, 1915 (8 Halsbury's Statutes 870).

Welfare authorities for the purposes of Part VII of the Public Health Act, 1936, are, in a county borough, the council of the borough, and in a county district, the council, whether of the county or of the district, who immediately before the commencement of that Act were in that district the local authority for the purposes of the Notification of Births Acts, 1907 and 1915 (15 Halsbury's Statutes 765, 767); see the Public Health Act, 1936, s. 200 (1) (29 Halsbury's Statutes 460). For meaning of "local authority" in this Act, see s. 64, *post*.

### *Artificial cream.*

**27. Regulation of sale of artificial cream.**—(1) No person shall sell, or offer or expose for sale, for human consumption under a description or designation including the word "cream" any substance purporting to be cream or artificial cream, unless—

(a) the substance is cream; or

(b) where the substance is artificial cream, the word "cream" is immediately preceded by the word "artificial." [258]

(2) No person shall use any vessel for conveying artificial cream intended for sale for human consumption, or for containing artificial cream at any time when it is exposed for such sale, unless the words "artificial cream" are printed in large and legible letters of uniform size and conspicuously visible either on the vessel itself, or on a label securely attached thereto. [259]

(3) A person who contravenes any of the provisions of this section shall be guilty of an offence. [260]

This section replaces s. 1 of the Artificial Cream Act, 1929 (8 Halsbury's Statutes 908).

See definitions of "cream" and "artificial cream" in s. 100 (1), *post*.

For penalties for offences, see s. 79, *post*.

The provision replaced by this section was held to apply only to the sale of cream or artificial cream as a separate article of food, and not to confectionery or a substance purporting to contain cream (*Lyons (J.) & Co., Ltd. v. Keating*, [1931] 2 K. B. 535; Digest Supp.).

**28. Premises where artificial cream is manufactured or sold to be registered.**—(1) Artificial cream shall not be manufactured, sold, or exposed or kept for sale for human consumption except on premises registered by the Food and Drugs authority:

Provided that registration under this section shall not be required in respect of—

- (a) the manufacture of artificial cream by any person solely for his domestic purposes ; or
  - (b) the manufacture of artificial cream on any premises for use in the preparation on those premises of some other food ; or
  - (c) the sale, exposure or keeping for sale of artificial cream on any premises where it is supplied only in the properly closed and unopened vessels in which it is delivered to those premises.
- [261]

(2) A person who uses any unregistered premises in contravention of the foregoing provisions of this section shall be guilty of an offence, and the court may order that any machine found on the premises which is suitable for use in the manufacture of artificial cream shall be forfeited. [262]

(3) A Food and Drugs authority shall, on the application of the occupier of, or of a person proposing to occupy, any premises, register those premises for the purposes of this section. [263]

(4) Upon any change in the occupation of premises registered under this section, the incoming occupier shall, if he intends to use them for the purpose for which they are registered, forthwith give notice of the change to the authority, who shall thereupon make any necessary alteration in their register.

If a person required to give a notice under this subsection fails to do so, he shall be liable to a fine not exceeding five pounds. [264]

(5) Where any substance having the composition of cream or artificial cream is sold or exposed or kept for sale on premises registered under this section, it shall be presumed to be artificial cream, unless the contrary is proved. [265]

This section replaces s. 2 of the Artificial Cream Act, 1929 (8 Halsbury's Statutes 908).

See definition of "artificial cream" in s. 100 (1), *post*.

For meaning of "Food and Drugs authority," see s. 64, *post*.

For penalties for offences, see s. 79, *post*.

**29. Application to artificial cream of certain provisions relating to cream.**—Such of the provisions of this Part of this Act and of any Milk and Dairies Regulations as relate to cream, other than provisions relating to the registration of dairymen and dairies, shall, unless, in the case of regulations, the regulations otherwise provide, apply in relation to artificial cream. [266]

This section replaces s. 3 of the Artificial Cream Act, 1929 (8 Halsbury's Statutes 909).

As to Milk and Dairies Regulations, see s. 20, *ante*.

See definition of "artificial cream" in s. 100 (1), *post*.

### PART III.

#### PROVISIONS AS TO OTHER KINDS OF FOOD.

##### *Bread and flour.*

**30. Regulations as to the composition of bread and the addition of substances to flour.**—(1) The Minister may make regulations (in this Act referred to as "Bread and Flour Regulations") for all or any of

the purposes mentioned in any of the following paragraphs, that is to say :—

- (a) prescribing the kinds of flour other than wheat flour and the other substances which may be used in the making of bread for sale ;
- (b) prescribing the descriptions under which bread made of flour other than wheat flour may be sold, and the manner in which any such bread is to be marked ;
- (c) prohibiting or restricting the addition of any substance, or the application of any treatment, to flour intended for sale or for use in the making of bread for sale ;
- (d) prescribing the descriptions under which, and conditions subject to which, flour may be sold ; and
- (e) for preventing danger to health from the importation, preparation, transport, storage, exposure for sale and delivery of bread or flour. [267]

(2) Regulations shall not be made for any of the purposes mentioned in paragraph (a) or paragraph (c) of the preceding subsection, unless they are expressed to be in the opinion of the Minister necessary or expedient for preventing danger to health or loss of nutritional value, or otherwise for protecting purchasers. [268]

This section replaces ss. 2, 8—10 of the Bread Act, 1836 (8 Halsbury's Statutes 852, 853).

The Minister is the Minister of Health ; see s. 100 (1), *post*.

See, further, s. 92, *post*.

**31. Prohibition of adulterants in bakehouses and mills.**—If any flour or other substance which under Bread and Flour Regulations may not be used in the making of bread for sale is found in a bakehouse, or any substance which under those regulations may not be added to flour is found in a flour-mill, the occupier of the bakehouse or mill, as the case may be, shall be guilty of an offence, unless he proves that the substance in question was not intended to be used in the making of bread for sale, or, as the case may be, was not intended to be added to any flour intended for sale. [269]

This section replaces s. 12 of the Bread Act, 1836 (8 Halsbury's Statutes 854).

For penalties for offences, see s. 79, *post*.

*Margarine, margarine-cheese, butter and milk-blended butter.*

**32. Limit of water in butter, &c., and provisions as to butter in margarine.**—(1) A person who sells, or offers or exposes for sale, or has in his possession for the purpose of sale—

- (a) any butter which contains more than sixteen per cent. of water ;  
or
- (b) any margarine which contains more than sixteen per cent. of water, or the fat of which contains more than ten per cent. of fat derived from milk ; or
- (c) any milk-blended butter which contains more than twenty-four per cent. of water,

shall be guilty of an offence. [270]

This subsection replaces ss. 6 (2) and 11 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 888, 891).

See definitions of " butter," " margarine," and " milk-blended butter " in s. 100 (1), *post*.

For penalties for offences, see s. 79, *post*.

"Exposes for sale" means that the goods must be visible to the purchaser (*Crane v. Lawrence* (1890), 25 Q. B. D. 152; 25 Digest, 124, 456); but they are exposed for sale when wrapped in paper (*Wheat v. Brown*, [1892] 1 Q. B. 418; 25 Digest 124, 457).

(2) Any label or advertisement which states or suggests that margarine with which it is given, or to which it relates, contains butter shall state the percentage of butter which it contains:

Provided that no offence shall be deemed to have been committed under this subsection, if the figure stated as the percentage of butter does not differ by more than two from the actual percentage.

A person who gives with any margarine sold by him a label, whether attached to or printed on the wrapper or container or not, which does not comply with the requirements of this subsection, or who publishes, or is a party to the publication of, an advertisement which does not comply therewith, shall be guilty of an offence. [271]

See notes to sub-s. (1), *supra*.

**33. Conditions to be observed in dealings in margarine, margarine-cheese, and milk-blended butter.**—(1) A person who sells, or forwards by any public conveyance, any margarine, margarine-cheese or milk-blended butter, shall sell or consign it as margarine or margarine-cheese, or, in the case of milk-blended butter, under an approved name. [272]

This subsection replaces s. 6 (1) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 888).

See definitions of "margarine," "margarine cheese," and "milk-blended butter" in s. 100 (1), *post*.

(2) Every person dealing in margarine, whether wholesale or by retail, and whether as manufacturer, importer, consignor, consignee, commission agent or otherwise, shall conform to such of the following regulations as may be applicable, that is to say:—

- (a) every container containing margarine shall have the word "Margarine" branded or durably marked on the bottom and sides and also, if it be closed, on the top thereof, in block letters not less than three-quarters of an inch long, the brand or mark being on the container itself and not only on a label, ticket or other thing attached thereto;
- (b) there shall be attached to every parcel of margarine exposed for sale by retail, in such manner as to be clearly visible to a purchaser, a label marked "Margarine" in printed block letters not less than one and a half inches long;
- (c) margarine when sold by retail, save in a container branded or durably marked as aforesaid, shall be delivered to the purchaser in a paper wrapper, with the word "Margarine" printed on the outside of the wrapper, or, if more wrappers than one are used, on the outside of the outer wrapper, in block letters not less than half an inch long and distinctly legible, and the outside of that wrapper shall bear no other printed matter, except such matter as may be required by or under any enactment;
- (d) margarine shall not be described on, or on a label enclosed within, any wrapper enclosing or container containing it, or on any label attached to a parcel thereof, or in any advertisement or invoice thereof, by any name other than either

"Margarine" or a name combining the word "Margarine" with an approved fancy or other descriptive name printed in type not larger than, and in the same colour, as the letters of the word "Margarine." [273]

This subsection replaces s. 6 (3) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 888).

It has been held that sale by retail does not apply to sales for consumption on the premises (*Moore v. Pearce's Dining and Refreshment Rooms*, [1895] 2 Q. B. 657; 25 Digest 124, 458).

As to para. (a), see *Hawes v. Stephens*, [1924] 2 K. B. 179; 25 Digest 125, 465.

(3) The requirements of paragraphs (a), (b) and (c) of the last preceding subsection shall apply in relation to margarine-cheese and to persons dealing therein with the substitution of "Margarine-cheese" for "Margarine":

Provided that, where margarine-cheese is sold or dealt in otherwise than by retail, it shall be sufficient compliance with those requirements if it is itself conspicuously marked with the words "Margarine-cheese." [274]

This subsection replaces s. 6 (4) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 888).

(4) The requirements of the said paragraphs (a), (b) and (c) shall apply in relation to milk-blended butter and to persons dealing therein with the substitution of an approved name for the word "Margarine," but on the outside of the wrapper referred to in the said paragraph (c) there shall, in addition to the approved name, be printed in an approved manner an approved description of the article, setting out the percentage of water contained therein. [275]

This subsection replaces s. 6 (5) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 888).

(5) A person who contravenes any of the foregoing provisions of this section shall be guilty of an offence. [276]

This subsection replaces s. 6 (7) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 889).

For penalties for offences, see s. 79, *post*.

(6) Any substance resembling butter or cheese which is exposed for sale and is not marked in the manner in which margarine, milk-blended butter or margarine-cheese is required by this section to be marked shall be presumed to be exposed for sale as butter or cheese, as the case may be. [277]

This subsection replaces s. 6 (6) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 889).

(7) In this section the expression "approved" means approved by the Minister of Agriculture and Fisheries, who, in approving for the purposes of this section names to be used in relation to margarine or milk-blended butter, shall not approve any name which refers to, or is suggestive of, butter or anything connected with the dairy interest. [278]

This subsection replaces s. 23 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 899).

See *Williams v. Baker*, [1911] 1 K. B. 566; 25 Digest 125, 463; *Millard v. Allwood*, [1912] 1 K. B. 590; 25 Digest 124, 461; and *Hawes v. Stephens*, [1924] 2 K. B. 179; 25 Digest 125, 465.

**34. Registration of factories and wholesale premises.**—(1) No premises shall be used—

(a) as a factory of margarine, margarine-cheese, or milk-blended butter;



- (b) for carrying on the business of a wholesale dealer in margarine, margarine-cheese, or milk-blended butter; or
- (c) as a butter factory, that is to say, a place at which by way of trade butter is blended, reworked, or subjected to any other treatment, but not so as to cease to be butter,

unless they are registered by the Food and Drugs authority for the purpose in question. [279]

See definitions of "margarine," "margarine-cheese," and "milk-blended butter" in s. 100 (1), *post*.

For the meaning of "Food and Drugs authority," see s. 64, *post*.

(2) Subject to the provisions of the next succeeding subsection, a Food and Drugs authority shall, on the application of the occupier of, or of a person proposing to occupy, any premises, register those premises for the purposes of this section. [280]

(3) Premises shall not be registered or used as a butter factory if they form part of, or communicate otherwise than by a highway with, any other premises which are required to be registered under paragraph (a) or paragraph (b) of subsection (1) of this section. [281]

(4) A person who on premises not registered for the purpose in question carries on any such manufacture, business or trade as is mentioned in subsection (1) of this section, or who uses any premises as a butter factory in contravention of the provisions of the last preceding subsection, shall be guilty of an offence. [282]

For penalties for offences under this Act, see s. 79, *post*.

(5) Upon any change in the occupation of premises registered under this section, the incoming occupier shall, if he intends to use them for the purpose for which they are registered, forthwith give notice of the change to the Food and Drugs authority, who shall thereupon make any necessary alteration in their register.

If a person required to give a notice under this subsection fails to do so, he shall be liable to a penalty not exceeding five pounds. [283]

(6) A Food and Drugs authority shall forthwith give notice to the Minister of Agriculture and Fisheries of any registration of premises under this section, of any change in the occupation of registered premises and of the deletion from the register of any premises which have ceased to be used for the purpose for which they were registered. [284]

This section replaces s. 8 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 890).

**35. Register of consignments to be kept in factories, &c.**—(1) Every occupier of a factory of margarine, margarine-cheese, or milk-blended butter, and every wholesale dealer in any such substance, shall keep a register showing the quantity and destination of each consignment of margarine, margarine-cheese, or milk-blended butter, as the case may be, sent out from his factory or place of business, and the register shall be open to the inspection of any officer of the Minister of Agriculture and Fisheries. [285]

See definitions of "margarine," "margarine-cheese," and "milk-blended butter" in s. 100 (1), *post*.

(2) If any such occupier or dealer—

(a) fails to keep such a register posted up to date ; or

(b) wilfully makes in the register an entry which is false in any particular, or wilfully omits to enter in the register any particular which ought to be entered ; or

(c) refuses to produce the register when required to do so by an officer of the Minister of Agriculture and Fisheries,

he shall be guilty of an offence. [286]

This section replaces s. 9 of the Food and Drugs (Adulteration) Act 1928 (8 Halsbury's Statutes 890).

For penalties for offences, see s. 79, *post*.

**36. Prohibition of adulterants in butter factories.**—If any substance intended to be used for the adulteration of butter is found in a butter factory, the occupier of the factory shall be guilty of an offence, and, if any oil or fat capable of being so used is found in such a factory, it shall be presumed to be intended to be so used, unless the contrary is proved. [287]

This section replaces s. 10 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 891).

For penalties for offences, see s. 79, *post*.

#### *Ice-cream.*

**37. Provisions as to ice-cream likely to cause milk-borne disease.**—

(1) Every manufacturer of, or dealer in, ice-cream shall, upon the occurrence of any milk-borne disease among the persons living or working in or about the premises on which the ice-cream is manufactured, stored or sold, forthwith give notice thereof to the medical officer of health of the district and, if he fails to do so, shall be liable to a fine not exceeding five pounds. [288]

(2) If the medical officer of health of a district has reasonable ground for suspecting that any ice-cream, or substance intended for use in the manufacture of ice-cream, is likely to cause any milk-borne disease, he may give notice to the person in charge thereof that, until further notice, the ice-cream or substance in question, or any specified portion thereof, is not to be used for human consumption and either is not to be removed, or is not to be removed except to some place specified in the notice.

A person who uses or removes any ice-cream or substance in contravention of the requirements of a notice given under this subsection shall be liable to a fine not exceeding ten pounds. [289]

(3) If on further investigation the medical officer is satisfied that the ice-cream or substance in question may safely be used for human consumption, he shall forthwith withdraw his notice, but, if he is not so satisfied, he shall cause it to be destroyed, and he shall also cause to be destroyed any other ice-cream or such substance as aforesaid then on the premises as to which he is not so satisfied. [290]

(4) Subject as hereinafter provided, where a notice given under subsection (2) of this section is withdrawn by the medical officer, or the medical officer acting under subsection (3) of this section causes any ice-cream or other substance to be destroyed, the local authority shall compensate the owner of the ice-cream or other substance in question for any depreciation in its value resulting from the action taken by the medical officer or, as the case may be, for the loss of its value :

Provided that—

(a) no compensation shall be payable under this section in respect of the destruction of any ice-cream or substance if the local

authority prove that it was likely to cause any milk-borne disease ;

(b) no compensation shall in any case be payable under this section—

(i) in respect of any ice-cream or substance manufactured on, or brought within, any premises while a notice given under subsection (2) of this section with respect to anything on those premises was operative ; or

(ii) in any case where the owner of the ice-cream or substance in question has failed to give a notice which he was required by subsection (1) of this section to give.

For the purposes of this subsection, the value of any ice-cream or other substance shall not be assessed at a sum exceeding the cost incurred by the owner in making or purchasing it. [291]

See, further, as to compensation, s. 86, *post*.

(5) In this section the expression “ milk-borne disease ” means any disease specified in Part II of the First Schedule to this Act and any other disease which the Minister may by order declare to be for the purposes of this section a milk-borne disease. [292]

Sub-s. (1) of this section replaces and makes of general application similar provisions in s. 188 (3) of the Public Health (London) Act, 1936 (30 Halsbury's Statutes 552), but most of the section is new.

### *Horseflesh.*

**38. Sign to be displayed on shops, &c., where horseflesh is sold for human consumption.**—(1) No person shall sell, or offer or expose for sale, or have in his possession for the purpose of sale, any horseflesh for human consumption elsewhere than in a shop, stall, or place over or on which a notice in legible letters stating that horseflesh is sold there is displayed in a conspicuous position so as to be visible whenever horseflesh is being sold, or offered or exposed for sale. [293]

(2) No person shall supply horseflesh for human consumption to a purchaser who has not asked to be supplied with horseflesh, or who has asked to be supplied with some compound article of food not ordinarily made of horseflesh. [294]

(3) A person who contravenes any of the provisions of this section shall be guilty of an offence. [295]

For penalties for offences under this Act, see s. 79, *post*.

(4) If any horseflesh is exposed for sale elsewhere than in a shop, stall or place distinguished as aforesaid without anything to show that it was not intended for sale for human consumption, the onus of proving that it was not so intended shall rest upon the person exposing it for sale. [296]

(5) In this section the expression “ horseflesh ” means the flesh of horses, asses and mules, and includes any such flesh whether cooked or uncooked and, whether alone, or accompanied by, or mixed with, any other substance, and the expression “ flesh ” includes any part of an animal. [297]

This section replaces ss. 1, 2, 6, 7 of the Sale of Horseflesh, etc., Regulation Act, 1889 (8 Halsbury's Statutes 860—862), and s. 186 of the Public Health (London) Act, 1936 (30 Halsbury's Statutes 548).

*Shell-fish.*

**39. Provision of means for cleansing shell-fish.**—(1) A county council or a local authority may provide, whether within or without their county or district, tanks or other apparatus for cleansing shell-fish and may make charges in respect of the use of any tank or other apparatus so provided. [298]

For meaning of "local authority," see s. 64, *post*.

(2) A county council or a local authority may contribute towards the expenses incurred under this section by any other council or any joint committee, or towards expenses incurred by any other person in providing, and making available to the public, means for cleansing shell-fish. [299]

(3) Any expenses incurred by a county council under this section shall, if the Minister by order so directs, be defrayed as expenses for special county purposes chargeable upon such part of the county as may be provided by the order, but any such order may be revoked or varied by a subsequent order. [300]

The Minister is the Minister of Health; see s. 100 (1), *post*.

(4) In London, a local authority may, with the consent of the Minister, borrow for the purposes of this section as if they were purposes of the Public Health (London) Act, 1936. [301]

As to "local authority," see s. 64, *post*.

The Minister is the Minister of Health; see s. 100 (1), *post*.

For the Public Health (London) Act, 1936, see 30 Halsbury's Statutes 437.

(5) In this section the expression "cleansing shell-fish" includes the subjection of shell-fish to any germicidal treatment. [302]

(6) Nothing in this section shall authorise the establishment of any tank or other apparatus, or the execution of any other work, on, over or under tidal lands below high-water mark of ordinary spring tides, except in accordance with such plans and sections, and subject to such restrictions and conditions, as may, before the work is commenced, be approved by the Board of Trade under the hand of one of the secretaries, under-secretaries or assistant secretaries of the Board. [303]

This section replaces ss. 1 and 2 of the Public Health (Cleansing of Shell-fish) Act, 1932 (25 Halsbury's Statutes 468, 469), and s. 191 of the Public Health (London) Act, 1936 (30 Halsbury's Statutes 553).

**PART IV.****PROVISIONS AS TO IMPORTATION.**

**40. Restrictions on the importation of certain foods.**—If there is imported into the United Kingdom, within the meaning of that expression as used in the Customs Consolidation Act, 1876—

- (a) any margarine or margarine-cheese, except in containers conspicuously marked "Margarine" or "Margarine-cheese," as the case may require;
- (b) any adulterated or impoverished milk, except in containers conspicuously marked with a name or description indicating that the milk has been so treated;

- (c) any other adulterated or impoverished food to which His Majesty may by Order in Council direct that this section shall be applied, except in containers conspicuously marked with a name or description indicating that the food has been so treated;
- (d) any milk-blended butter, except in containers conspicuously marked with a name approved for the purpose by the Minister of Agriculture and Fisheries, not being a name which refers to, or is suggestive of, butter or anything connected with the dairy interest;
- (e) any butter, margarine or milk-blended butter the sale of which would be an offence under subsection (1) of section thirty-two of this Act; or
- (f) any food which does not comply with any relevant provisions contained in regulations made under this, or any other, Act with respect to the importation of food,

the importer shall be guilty of an offence under this Part of this Act.

[304]

This section replaces s. 12 (1) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 891).

As to the meaning of "imported into the United Kingdom" in the Customs Consolidation Act, 1876, see s. 39 of that Act and note thereto (18 Halsbury's Statutes 297).

As to offences under this Part of this Act, see s. 42, *post*.

**41. Power of Commissioners of Customs and Excise to have imported food sampled.**—(1) The Commissioners of Customs and Excise (in this Part of this Act referred to as "the Commissioners") shall, in accordance with directions given by the Treasury, take such samples of consignments of imported food as may be necessary for the enforcement of the provisions of this Part of this Act. [305]

(2) Where the Commissioners take a sample of any consignment in pursuance of such directions, they shall divide it into not less than three parts, and send one part to the importer and one part to the Government Chemist and retain one part. [306]

(3) Where a sample taken under this section has been analysed and it appears from the certificate of the Government Chemist that an offence under this Part of this Act has been committed, the Commissioners shall forthwith send a copy of the certificate to the importer. [307]

This section replaces s. 20 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 897).

**42. Prosecutions and penalties for offences under Part IV.**—(1) Prosecutions for offences under this Part of this Act shall be undertaken by the Commissioners. [308]

This subsection replaces s. 12 (2) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 892).

The Commissioners are the Commissioners of Customs and Excise; see s. 41 (1), *ante*.

(2) Whenever the Commissioners are of opinion that an offence under this Part of this Act has been committed, they shall communicate to the Minister of Agriculture and Fisheries the name of the importer and such other facts as they possess, or may obtain, as to the destination of the consignment. [309]

This subsection replaces s. 12 (3) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 892).



(3) A person who commits an offence under this Part of this Act shall be liable in the case of a first offence to a customs penalty not exceeding twenty pounds, and in the case of a subsequent offence, to a customs penalty not exceeding one hundred pounds or to imprisonment for a term not exceeding three months, or to both such a penalty and such imprisonment :

Provided that, if in any particular case the Commissioners so elect, the maximum customs penalty shall be a sum equal to the value of the goods imported bearing the same mark or description, to be estimated and taken according to the rate and price for which goods of the like kind, but of the best quality, were sold at, or about, the time of the importation. [310]

This subsection replaces, with respect to offences of importing margarine, etc., contrary to the statute, s. 27 (3) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 900).

(4) For the purposes of this Part of this Act, food shall be deemed to be adulterated or impoverished if any other substance has been added to it, or if any part of it has been abstracted, so as in either case to affect injuriously its nature, substance, or quality :

Provided that, where regulations made under this, or any other, Act contain provisions prohibiting or restricting the addition of any substance to food, the addition of any such substance—

- (a) if made in contravention of the regulations shall, and
- (b) if made to an amount not exceeding the limit, if any, specified in the regulations shall not,

for the purposes of this subsection be deemed to affect injuriously the nature, substance or quality of the food in question. [311]

This subsection replaces s. 12 (4) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 892).

(5) In any proceedings for an offence under this Part of this Act, the certificate of the Government Chemist of the result of an analysis shall be sufficient evidence of the facts therein stated, unless the defendant requires that the person who made the analysis shall be called as a witness, and the defendant shall not be entitled so to do unless at least three clear days before the day on which the summons is returnable he gives notice to the prosecutor that he requires that person's attendance.

The reasonable costs and expenses of such a person's attendance shall be paid by the prosecutor or defendant, as the court may order. [312]

This subsection replaces s. 28 (5) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 901).

(6) In any such proceedings, the part of the sample retained by the Commissioners shall be produced at the hearing and the court may, if it thinks fit, and upon the request of either party shall, cause it to be sent for a joint analysis and report to the Government Chemist and some other person holding such qualifications as may be prescribed for the office of public analyst, and the costs of the analysis shall be paid by the prosecutor or defendant as the court may order. [313]

This subsection replaces s. 28 (4), (6) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 901).

(7) For the purposes of this section, a document purporting to be a certificate of the Government Chemist and produced by the prosecution

shall, until the contrary is proved, be taken to be such a certificate.  
[314]

**43. Construction of Part IV.**—This Part of this Act shall be construed as one with the Customs Consolidation Act, 1876, as amended by any subsequent enactment, and shall be deemed not to be part of this Act ;

Provided that in this Part of this Act—

- (a) any expression to which a meaning is assigned by section one hundred of this Act shall have that meaning ;
- (b) any reference to this Act shall be construed as such a reference and not as a reference to the said Act of 1876. [315]

A similar provision was included in s. 12 (2) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 892).

For the Customs Consolidation Act, 1876, see 16 Halsbury's Statutes 287.

## PART V.

### MARKETS, SLAUGHTER-HOUSES AND COLD-AIR STORES.

This Part of this Act does not extend to London ; see s. 103 (2), *post*.

#### *Markets.*

**44. Establishment or acquisition of market by local authority.**—

(1) Subject to the provisions of this section, an urban authority and, with the consent of the Minister, a rural authority may—

- (i) establish a market within their district ;
- (ii) acquire by agreement (but not otherwise), either by purchase or on lease, the whole or any part of an existing market undertaking within their district, and any rights enjoyed by any person within their district in respect of a market and of tolls ;

and, in either case, may provide—

- (a) a market place with convenient approaches thereto ;
- (b) a market-house and other buildings convenient for the holding of a market. [316]

The Minister is the Minister of Health ; see s. 100 (1), *post*.

(2) Without the consent of the person concerned, no market shall be established in pursuance of this section so as to interfere with any rights, powers or privileges enjoyed within the district in respect of a market by any person :

Provided that, for the purposes of this subsection, another local authority shall not be deemed to be enjoying any rights, powers or privileges within the district by reason only of the fact that they have established a market within their own district either under paragraph (i) of the preceding subsection or (otherwise than by acquisition of a then existing market) under any corresponding provision repealed by this Act, or by the Public Health Act, 1875. [317]

(3) In the following provisions of this Act relating to markets, the expression "market authority" means a local authority who have established or acquired a market under this section, or under any corresponding enactment repealed by this Act or by the Public Health Act, 1875. [318]

This section replaces s. 166 of the Public Health Act, 1875 (13 Halsbury's Statutes 694), and s. 1 of the Public Health Act, 1908 (13 Halsbury's Statutes 948).

**45. Power of owner of market to sell it to a local authority.**—The owner of a market undertaking, or of any rights in respect of a market and of tolls, whether established under, or enjoyed by virtue of, statutory powers or not, may sell or lease to a local authority the whole or any part of his market undertaking or rights, but subject to all liabilities attaching thereto :

Provided that a sale by a market company under this section must be authorised, if the company is a company within the meaning of the Companies Act, 1929, by a special resolution of the members passed in the manner provided in Part IV of that Act, and, if the company is not such a company, by a resolution passed by three-fourths in number and value of the members present, either personally or by proxy, at a meeting specially convened for the purpose with notice of the business to be transacted. [319]

This section replaces s. 168 of the Public Health Act, 1875 (13 Halsbury's Statutes 895).

For the Companies Act, 1929, see 2 Halsbury's Statutes 775 ; for Part IV of that Act, see *ibid.* 832.

**46. Market days and hours.**—A market authority may, with the approval of the Minister, appoint the days on which, and the hours during which, markets are to be held. [320]

Cf. s. 14 of the Markets and Fairs Clauses Act, 1847 (11 Halsbury's Statutes 457). As to "market authority," see s. 44 (3), *ante*.

**47. Stallages, tolls and other charges.**—(1) The Minister may, on the application of a market authority, approve for the purposes of the market a table of stallages, tolls and charges, and the authority may demand in respect of the market, and in respect of the weighing and measuring of articles and vehicles, either the stallages, tolls and charges approved by the Minister, or such less stallages, tolls and charges as they may from time to time determine. [321]

As to this and the following two sections, cf. the provisions with respect to stallages, tolls, and other charges in markets contained in ss. 31—41 of the Markets and Fairs Clauses Act, 1847 (11 Halsbury's Statutes 462—464). This subsection may be compared with s. 36 of the Act of 1847.

The Minister is the Minister of Health ; see s. 100 (1), *post*.

For the meaning of "market authority," see s. 44 (3), *ante*.

(2) A market authority who provide a weighing machine for weighing cattle, sheep or swine may demand in respect of the weighing of such animals charges not exceeding those specified in the Second Schedule to this Act, or such other charges as the Minister may from time to time approve. [322]

Cf. s. 8 of the Markets and Fairs (Weighing of Cattle) Act, 1887 (11 Halsbury's Statutes 481), which is repealed by this Act so far as respects any local authority outside London who are a market authority. And see notes to sub-s. (1), *supra*.

(3) The authority shall keep exhibited in conspicuous places in the market place and in any market house tables stating in large and legibly printed characters the several stallages, tolls and charges payable under this Act, and shall keep so much of the tables as relates to charges payable in respect of the weighing of vehicles, or, as the case may be, in respect of the weighing of animals, conspicuously exhibited at every weighing machine provided by them in connection with the market for the purpose in question. [323]

Cf. s. 41 of the Markets and Fairs Clauses Act, 1847 (11 Halsbury's Statutes 464).

(4) A person who demands or accepts a stallage, toll or charge greater than that for the time being authorised shall be liable to a fine not exceeding forty shillings. [324]

*Cf. s. 37 of the Markets and Fairs Clauses Act, 1847 (11 Halsbury's Statutes 463).*

(5) Nothing in this section shall apply in relation to rents charged by a market authority in respect of the letting of accommodation within their market for any period longer than one week. [325]

**48. Time for payment of stallages, &c.**—(1) Subject to the provisions of this section, stallages, tolls and charges payable in respect of the market shall be paid from time to time on demand to an authorised market officer. [326]

*Cf. s. 33 of the Markets and Fairs Clauses Act, 1847 (11 Halsbury's Statutes 463). See definition of "authorised market officer" in s. 100 (1), post.*

(2) Charges payable in respect of the weighing or measuring of articles, vehicles or animals shall be paid to an authorised market officer by the persons bringing the articles, vehicles or animals to be weighed or measured before they are weighed or measured. [327]

*Cf. s. 34 of the Markets and Fairs Clauses Act, 1847 (11 Halsbury's Statutes 463).*

(3) Tolls payable in respect of animals brought to the market for sale shall be payable and may be demanded by an authorised market officer so soon as the animals in respect of which they are payable are brought into the market place and before they are put into any pen, or tied up in the market place, but further tolls shall be payable and may be demanded in respect of any of the animals which are not removed within one hour after the close of the market. [328]

*Cf. s. 35 of the Markets and Fairs Clauses Act, 1847 (11 Halsbury's Statutes 463).*

**49. Recovery of stallages, &c.**—(1) If a person liable to pay any stallage, toll or charge authorised to be taken under this Act does not pay it when lawfully demanded, the market authority may, by any authorised market officer, levy it by distress of all or any of the animals, poultry or other articles in respect of which the stallage, toll or charge is payable, or of any other animals, poultry or articles in the market belonging to, or in charge of, the person liable. [329]

As to "market authority," see s. 44 (3), *ante*; and for meaning of "authorised market officer," see s. 100 (1), *post*.

(2) Any such stallage, toll or charge may also be recovered either summarily as a civil debt, or as a simple contract debt in any court of competent jurisdiction. [330]

*Cf. s. 38 of the Markets and Fairs Clauses Act, 1847 (11 Halsbury's Statutes 463). See the cases in the English and Empire Digest, Vol. 18, pp. 426, 427, and Vol. 33, pp. 543—545.*

**50. Sales elsewhere than in market, or in shops, &c. prohibited during market hours.**—Any person, other than a licensed hawker or certificated pedlar, who on a market day and during market hours sells or exposes for sale in any place within the district of the market authority and within such distance from the market as the authority may by byelaw declare, except in his own dwelling place or shop or in, or at the door of, any premises to a person resident therein, any articles specified in the byelaw, being articles commonly sold in the market, shall be liable to a fine not exceeding forty shillings.



The market authority shall keep exhibited in conspicuous positions in the vicinity of the market notices stating the effect of any byelaw made under this section. [331]

*Cf.* s. 13 of the Markets and Fairs Clauses Act, 1847 (11 Halsbury's Statutes 457).

As to "market authority," see s. 44 (3), *ante*.

"Hawker" is defined in s. 2 of the Hawkers Act, 1888 (16 Halsbury's Statutes 579); and "pedlar" in s. 3 of the Pedlars Act, 1871 (11 Halsbury's Statutes 471).

As to the exemption of hawkers, see *Llandudno Urban Council v. Hughes*, [1900] 1 Q. B. 472; 33 Digest 567, 527; *Lee v. Wallocks* (1914), 111 L. T. 573; 33 Digest 566, 516. Pedlars are only exempt when acting as pedlars, and not when acting as hawkers; see *Woolwich Local Board of Health v. Gardiner*, [1895] 2 Q. B. 497; 33 Digest 568, 538.

As to "sells or exposes for sale," see *Lambert v. Rowe*, [1914] 1 K. B. 38; 33 Digest 554, 367; *Luke v. Charles* (1861), 25 J. P. 148; 33 Digest 554, 365; *Stretch v. White* (1861), 25 J. P. 435; 33 Digest 553, 358; *Philpott v. Allright* (1906), 94 L. T. 540; 33 Digest 554, 369.

### 51. Provision and verification of weighing machines, scales, &c.—

(1) A market authority shall provide sufficient scales, weights, measures and weighing machines for weighing or measuring articles sold in the market and vehicles in which articles are brought for sale in the market, and shall appoint officers to attend to the weighing and measuring of such articles and vehicles. [332]

*Cf.* ss. 21 and 24 of the Markets and Fairs Clauses Act, 1847 (11 Halsbury's Statutes 460).

As to "market authority," see s. 44 (3), *ante*.

(2) A market authority in whose market cattle, sheep or swine are sold shall, unless there is in force an order of the Minister of Agriculture and Fisheries declaring that the circumstances are such as to render compliance with this subsection unnecessary, provide to the satisfaction of that Minister a weighing machine, or weighing machines, adapted for weighing such animals and appoint officers to attend to the weighing thereof.

A weighing machine provided under this subsection shall for the purposes of section one of the Markets and Fairs (Weighing of Cattle) Act, 1926, be deemed to have been provided for the purpose of complying with the provisions of the principal Act therein referred to. [333]

*Cf.* s. 4 of the Markets and Fairs (Weighing of Cattle) Act, 1887 (11 Halsbury's Statutes 480), which is repealed by this Act so far as respects any local authority outside London who are a market authority.

For s. 1 of the Markets and Fairs (Weighing of Cattle) Act, 1926, see 11 Halsbury's Statutes 484.

(3) The authority shall cause all such scales, weights, measures and weighing machines to be verified at least twice in every year by the inspector of weights and measures acting for, or for the area comprising, their district. [334]

*Cf.* the Weights and Measures Act, 1878, Sched. VI, Pt. II (20 Halsbury's Statutes 394), which is repealed by this Act so far as respects any local authority outside London who are a market authority.

52. Provisions as to the weighing of articles and of vehicles with their loads and after discharge.—(1) A person selling, or offering for sale, any articles in the market shall, if required so to do by the buyer, cause them to be weighed or measured by the scales and weights or measures provided by the market authority and, if he refuses so to do, shall be liable to a fine not exceeding forty shillings. [335]

*Cf.* s. 22 of the Markets and Fairs Clauses Act, 1847 (11 Halsbury's Statutes 460).

(2) The person in charge of any vehicle in which articles are brought for sale in the market shall, on the request of the buyer or seller of the articles, or his agent, take the vehicle with its load to the nearest



weighing machine provided by the market authority in connection with the market and permit it to be weighed and, after its load has been discharged, shall, on such request as aforesaid, take it to the weighing machine so provided which is nearest to the place of discharge, and permit it to be re-weighed without its load. [336]

*Cf. s. 25 of the Markets and Fairs Clauses Act, 1847 (11 Halsbury's Statutes 460).*

(3) If the person in charge of any such vehicle as aforesaid refuses to comply with the provisions of the last preceding subsection, or refuses to assist in the weighing of the vehicle, he shall be liable to a fine not exceeding forty shillings. [337]

*Cf. s. 26 of the Markets and Fairs Clauses Act, 1847 (11 Halsbury's Statutes 461).*

**53. Information as to number, weight, &c. of animals and articles brought to the market.**—The person in charge of any vehicle in which, and any other person by whom, animals, poultry or other articles are brought for sale in the market shall give to any authorised market officer such information as to their number and kind or, in the case of articles on which tolls are chargeable by reference to weight, as to their weight as that officer may call for. [338]

For meaning of "authorised market officer," see s. 100 (1), *post*.

**54. Penalty for refusal to weigh.**—If an officer appointed by a market authority to attend to the weighing or measuring of articles sold in the market, or of vehicles bringing articles for sale in the market, or of animals brought for sale in the market, refuses or neglects on demand to perform his duties with respect to any such article, vehicle or animal, he shall be liable to a fine not exceeding forty shillings. [339]

*Cf. s. 23 of the Markets and Fairs Clauses Act, 1847 (11 Halsbury's Statutes 460). As to "market authority," see s. 44 (3), ante.*

**55. Frauds in connection with weighing, or with tolls, &c.**—A person who—

- (a) commits any fraud with respect to the weighing or measuring of any article, or the weighing of any vehicle, whether loaded or unloaded, or the weighing of any animal, for the purposes of the foregoing provisions of this Part of this Act, or with respect to the recording of the weight of any article or of any vehicle or its load, or of any animal; or
- (b) with intent to evade payment of the whole or a part of any toll or other charge, gives to an authorised market officer false information as to the number, kind or weight of any animals, poultry or other articles,

shall be liable to a fine not exceeding twenty pounds, or to imprisonment for a term not exceeding three months, or to both such a fine and such imprisonment. [340]

*Cf. ss. 27—30 of the Markets and Fairs Clauses Act, 1847 (11 Halsbury's Statutes 461, 462).*

**56. Power of any local authority maintaining a market to make market byelaws.**—Any local authority who maintain a market, whether they are a market authority within the meaning of that expression as used in this Act or not, may make byelaws for—

- (a) regulating the use of the market place, and the buildings, stalls, pens and standings therein;

- (b) preventing nuisances or obstructions in the market place, or in the immediate approaches thereto ;
- (c) regulating porters and carriers resorting to the market, and fixing the charges to be made for carrying articles therefrom within the district. [341]

*Cf.* s. 42 of the Markets and Fairs Clauses Act, 1847 (11 Halsbury's Statutes 464), which was applied to urban authorities by the Public Health Act, 1875, s. 167 (13 Halsbury's Statutes 695), and to rural authorities by the Public Health Act, 1908, s. 1 (13 Halsbury's Statutes 948).

For meaning of "local authority," see s. 64, *post*; and for meaning of "market authority," see s. 44 (3), *ante*.

As to the validity of byelaws made by a market authority, see *Scott v. Glasgow Corpn.*, [1899] A. C. 470; 33 Digest 538, 146.

### *Slaughter-houses and knackers' yards.*

**57. Licensing of slaughter-houses and knackers' yards.**—(1) It shall not be lawful—

- (a) for the occupier of any premises to use them as a slaughter-house or knacker's yard or permit them to be so used, unless he holds a licence granted under this section by the local authority authorising him to keep those premises as a slaughter-house or, as the case may be, as a knacker's yard ; or
- (b) for any person other than the occupier to use any premises as a slaughter-house or knacker's yard, unless the occupier of those premises holds in respect thereof such a licence as aforesaid :

Provided that the occupier of any premises which immediately before the commencement of this Act were registered or licensed as a slaughter-house or knacker's yard under any enactment repealed by this Act, and were then in use as such, shall be deemed to hold in respect of those premises a licence granted under this section and expiring at the expiration of four months from the commencement of this Act. [342]

For meaning of "local authority," see s. 64, *post*.

(2) A local authority on receiving from the occupier of, or a person proposing to occupy, any premises an application for the grant or renewal of a licence authorising him to keep those premises as a slaughter-house, or as a knacker's yard, may grant or renew to him a licence in respect of those premises :

Provided that the authority—

- (a) shall not grant a licence, otherwise than by way of renewal of an existing licence, until an officer of the authority has inspected the premises named in the application and has made a report thereon ;
- (b) shall not refuse to grant or renew a licence in respect of premises which immediately before the commencement of this Act either were registered as a slaughter-house or, as the case may be, a knacker's yard, or were premises in respect of which a licence without limitation of time authorising their use as a slaughter-house or, as the case may be, a knacker's yard was in operation at that date, and in either case were then in use as such, unless they are satisfied that the applicant is not a proper person to keep

such a place, or that the premises named in the application are not suitable for use for the purpose in question.

[343]

(3) If, on an application for the grant or renewal of a licence in respect of any such premises as are mentioned in proviso (b) to the last preceding subsection, it appears to the local authority that the premises are not suitable for use as a slaughter-house or, as the case may be, a knacker's yard, then, unless they are satisfied that it is not reasonably practicable to render the premises suitable, they shall adjourn the application and serve on the applicant a notice specifying the works which, in their opinion, must be carried out in order to render the premises suitable and allowing a reasonable time, not being less than three months from the service of the notice, for the execution of those works.

A notice served under this subsection shall operate as a grant or renewal of a licence to the applicant until the expiration of one month after the expiration of the time fixed by the notice, or of any extension thereof granted by the authority. [344]

(4) A local authority may require a person who applies for the grant or renewal of a licence under this section to give to them, before his application is considered, information as to any similar licence which he holds, or has held, either in their district or in the district of any other local authority, and, if an applicant who is so required gives to the authority any information which is false in any material respect, he shall be guilty of an offence. [345]

For penalties for offences under this Act, see s. 79, *post*.

(5) If a local authority refuse to grant or renew a licence under this section, they shall forthwith give notice to the applicant of their decision in the matter; and shall, if so required by him within fourteen days of their decision give to him within forty-eight hours a statement of the grounds on which it was based. [346]

(6) A person aggrieved by the refusal of a local authority to grant or renew a licence under this section may appeal to a court of summary jurisdiction. [347]

(7) A licence under this section shall remain in force for such period not exceeding thirteen months as may be fixed by the local authority, but may from time to time be renewed by them for a period not exceeding thirteen months at any one time. [348]

(8) A person who uses any premises as a slaughter-house or knacker's yard in contravention of the provisions of this section, or permits any premises to be so used, shall be guilty of an offence. [349]

This and the following two sections replace the provisions with respect to slaughter-houses contained in ss. 125—131 of the Towns Improvement Clauses Act, 1847 (13 Halsbury's Statutes 572—575) (which, however, are not repealed); ss. 169, 170 of the Public Health Act, 1875 (13 Halsbury's Statutes 696); and ss. 29, 30 of the Public Health Acts Amendment Act, 1890 (13 Halsbury's Statutes 836). These three sections do not apply to public slaughter-houses provided by a local authority; see s. 60 (3), *post*.

For penalties for offences, see s. 79, *post*.

**58. Byelaws as to slaughter-houses and knackers' yards.**—(1) A local authority may make byelaws—

(a) for securing that slaughter-houses and knackers' yards are kept in a sanitary condition and are properly managed, and for preventing cruelty therein; and

- (b) requiring persons licensed under this Act to keep knackers' yards to keep, and produce when required, records of animals brought into the yards and of the manner in which those animals and the different parts thereof were disposed of. [350]

This subsection replaces s. 128 of the Towns Improvement Clauses Act, 1847 (13 Halsbury's Statutes 573) (which, however, is not repealed), as applied to urban authorities by s. 169 of the Public Health Act, 1875 (13 Halsbury's Statutes 696).

For meaning of "local authority," see s. 64, *post*.

See *Dodd v. Venner* (1922), 127 L. T. 746; 38 Digest, 161, 80.

- (2) Nothing in the Slaughter of Animals Act, 1933, shall be construed as restricting any power to make byelaws under paragraph (a) of the preceding subsection or as rendering invalid any byelaw made under any corresponding enactment repealed by this Act. [351]

For the Slaughter of Animals Act, 1933, see 26 Halsbury's Statutes 647.

- (3) If a person convicted of an offence against any byelaws made under this section holds a licence under the last preceding section, the court may, in addition to any other penalty, cancel the licence. [352]

*Cf.* s. 129 of the Towns Improvement Clauses Act, 1847 (13 Halsbury's Statutes 573). See notes to s. 57, *ante*.

#### 59. Sign to be displayed on slaughter-house or knacker's yard.—

- (1) The occupier of a slaughter-house or knacker's yard in respect of which a licence under this Act is in force shall display in a conspicuous position on the premises a legible notice with the words "Licensed Slaughter-house" or "Licensed Knacker's Yard," as the case may be. [353]

- (2) A person who fails to comply with the provisions of this section shall be liable to a fine not exceeding forty shillings. [354]

This section replaces s. 170 of the Public Health Act, 1875 (13 Halsbury's Statutes 696).

See notes to s. 57, *ante*.

#### 60. Power of local authority to provide public slaughter-houses.—

- (1) A local authority may provide public slaughter-houses :

Provided that any proposal to provide under this section a slaughter-house within the district of another local authority shall require the consent of that authority, but such consent shall not be unreasonably withheld, and any question whether or not consent is unreasonably withheld shall be referred to and determined by the Minister. [355]

- (2) A local authority by whom a public slaughter-house has been provided under this section, or under any enactment repealed by this Act, or by the Public Health Act, 1875,—

- (a) shall make byelaws for securing that the slaughter-house is kept in a sanitary condition and is properly managed and for preventing cruelty therein ;
- (b) may make such charges in respect of the use of the slaughter-house as the Minister may have approved, or such less charges as they may from time to time determine ;
- (c) may provide plant or apparatus for treating or disposing of waste matters and refuse resulting from the slaughtering of animals in the slaughter-house. [356]

(3) Nothing in the three last preceding sections shall apply in relation to a public slaughter-house provided by a local authority under this, or any other, Act. [357]

This section replaces s. 169 of the Public Health Act, 1875 (13 Halsbury's Statutes 696), which, however, applied only to urban authorities.

For meaning of "local authority" in this Act, see s. 64, *post*.

**61. Elimination of private slaughter-houses.**—(1) A local authority may with a view to reducing the number of private slaughter-houses—

- (a) acquire by agreement any premises within the district which are used as a slaughter-house and discontinue the use of the premises for that purpose ;
- (b) agree with the persons interested in any premises within the district which are used as a slaughter-house for the discontinuance of slaughtering on those premises. [358]

For meaning of "local authority," see s. 64, *post*.

(2) Subject to the following provisions of this section, a local authority who have provided a public slaughter-house may determine that, after such date as may be fixed by their resolution, no fresh licence to keep premises as a slaughter-house shall be granted by them under this Act, and that on the said date all such licences then in force shall cease to have effect and shall not be renewable :

Provided that the resolution shall not have effect until it has been approved by the Minister. [359]

The Minister is the Minister of Health ; see s. 100 (1), *post*.

(3) So soon as any such resolution as aforesaid has been passed, it shall be published in one or more local newspapers circulating in the district and a copy shall be served on every person licensed under this Act to keep a slaughter-house within the district, and the Minister, before approving the resolution, shall take into consideration any representation received by him within two months after the publication of the resolution, and shall not approve the resolution unless he is satisfied that there will be slaughter-house accommodation adequate to meet the needs of the inhabitants of the district. [360]

(4) A resolution under this section may exempt from the operation thereof any specified existing slaughter-house and may reserve power for the local authority, with the approval of the Minister, to grant for special reasons a fresh licence, and the Minister in approving a resolution may modify it by inserting such an exemption or reservation. [361]

(5) The licence of an existing slaughter-house exempted by virtue of the last preceding subsection and a fresh licence granted by virtue thereof shall, notwithstanding anything in the foregoing provisions of this Part of this Act, be made subject to such conditions, including a condition that during a specified period a renewal of the licence shall not be refused on any ground except the unsuitability of the holder or of the premises, as the Minister in approving the resolution, or, as the case may be, in approving the grant of the fresh licence, may determine to be reasonable. [362]

(6) The owner and the occupier of any premises in the district which at the date when the resolution of the local authority became operative were lawfully being used as a slaughter-house shall be entitled to receive compensation from the authority for any loss sustained by



them by reason of it being no longer lawful to use those premises as a slaughter-house :

Provided that if a slaughter-house is structurally defective, or otherwise open to objection on sanitary grounds, the arbitrator in determining the amount of compensation shall have regard to that fact. [363]

(7) Where under a local Act a local authority are required to pay or tender compensation in respect of slaughter-houses of any specified class the use of which is rendered unlawful by reason of the provision of a public slaughter-house by the authority, then for the purposes of that requirement a slaughter-house which immediately before the commencement of this Act was a slaughter-house of any such class shall be deemed to continue to be such a slaughter-house so long as it remains licensed under this Act. [364]

*Cold-air stores and refrigerators.*

**62. Establishment by local authority of cold-air stores and refrigerators.**—(1) A local authority who have provided, or are about to provide, a public slaughter-house, or a market, may, with the approval of the Minister, provide a cold-air store or refrigerator for the storage and preservation of meat and other articles of food, and may make charges in respect of the use of any such store or refrigerator :

Provided that any proposal to provide under this section a cold-air store or refrigerator within the district of another local authority shall require the consent of that authority, but such consent shall not be unreasonably withheld, and any question whether or not consent is unreasonably withheld shall be referred to and determined by the Minister. [365]

For meaning of "local authority," see s. 64, *post*.

The Minister is the Minister of Health ; see s. 100 (1), *post*.

(2) A local authority who intend to apply for the approval of the Minister under this section shall, one month at least before making the application, give notice of their intention by advertisement in one or more local newspapers circulating in their district, and, where the consent of the local authority of another district is required, in one or more local newspapers circulating in that district, and the Minister shall consider any objection to the authority's proposals which he may receive within four weeks after the publication of the advertisement from any person appearing to him to be interested, and, in the event of any such objection being received and not withdrawn, shall cause a local inquiry to be held. [366]

This section replaces s. 71 of the Public Health Act, 1925 (13 Halsbury's Statutes 1147).

*Saving.*

**63. Saving for Port of London Authority and Mersey Docks and Harbour Board.**—Nothing in this Part of this Act shall apply to any slaughter-house or knacker's yard belonging to the Port of London Authority or the Mersey Docks and Harbour Board and forming part of an imported animals' wharf or landing place approved by the Minister of Agriculture and Fisheries under the Diseases of Animals Acts, 1894 to 1937, for the purpose of the landing of imported animals. [367]

For the Diseases of Animals Acts, 1934 to 1937, see 1 Halsbury's Statutes 389 *et seq.* ; 28 Halsbury's Statutes 7 ; and 30 Halsbury's Statutes 93.

## PART VI.

## GENERAL AND MISCELLANEOUS.

*Administration.*

64. "Local authority" and "Food and Drugs authority."—In this Act the expression "local authority" means—

- (a) as respects the City of London, the Common Council and, as respects a metropolitan borough, the council thereof;
- (b) as respects the Inner Temple and the Middle Temple, the respective overseers thereof; and
- (c) as respects any other borough and any urban district or rural district, the council of the borough or district:

Provided that, in the case of a rural district with respect to which there is in force such a direction as is mentioned in subsection (2) of section forty-two of the Local Government Act, 1933, the council by whom the affairs of the district are being temporarily administered shall be deemed to be the local authority;

and the expression "Food and Drugs authority" means—

- (i) as respects the City of London, the Common Council and, as respects a metropolitan borough, the council thereof;
- (ii) as respects a county borough, and also as respects any non-county borough or urban district which has according to the last published census for the time being a population of forty thousand or upwards, the local authority; and
- (iii) as respects any other area, the county council:

Provided that—

- (a) if a county council satisfy the Minister that the area or areas in respect of which they would be the Food and Drugs authority would be rendered inconvenient in size, shape or situation for the efficient performance of their duties as the Food and Drugs authority, the Minister may direct that the county council shall be the Food and Drugs authority as respects the district or districts of any one or more of the local authorities who, but for such a direction, would be Food and Drugs authorities under this Act, but were not such authorities under the law in force immediately before the commencement thereof;
- (b) on the application of the local authority of any non-county borough or urban district which has according to the last published census for the time being a population of twenty thousand or upwards but less than forty thousand, the Minister may direct that the local authority shall, in lieu of the county council, be the Food and Drugs authority as respects their district. [368]

The latter part of this section (definition of "Food and Drugs authority") replaces s. 13 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 893). "Local authority" was not defined as such in that Act.

For s. 42 (2) of the Local Government Act, 1933, see 26 Halsbury's Statutes 326.  
The Minister is the Minister of Health; see s. 100 (1), *post*.

**65. Duty to enforce provisions of Act.**—(1) It shall be the duty of every Food and Drugs authority within their area to carry into execution and enforce the provisions of—

- (a) sections one to seven of this Act (which relate to the composition of food and drugs);
- (b) section twenty-four of this Act (which relates to additions not to be made to milk and liquids not to be sold as milk);
- (c) sections twenty-seven to twenty-nine of this Act (which relate to artificial cream);
- (d) sections thirty-two to thirty-six of this Act (which relate to margarine, margarine-cheese, butter and milk-blended butter); and
- (e) any other section of this Act which they are specifically directed to enforce,

with a view to securing that food and drugs are sold only in a pure and genuine condition. [369]

This subsection replaces s. 14 (1) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 893).

As to Food and Drugs authorities, see s. 64, *ante*.

(2) It shall be the duty of every local authority within their district to carry into execution and enforce the provisions of any section of this Act with respect to which the duty is not expressly, or by necessary implication, imposed on some other authority. [370]

For meaning of "local authority," see s. 64, *ante*.

(3) A county council or local authority may institute proceedings under any section of, or regulation made under, this Act, notwithstanding that they are not the authority charged with the execution and enforcement thereof. [371]

As to how far an authority can be compelled to carry out its duties under this Act, see *Pasmore v. Osaldtwistle Urban District Council*, [1898] A. C. 387; 38 Digest 154, 38; *R. v. Leicester Union*, [1899] 2 Q. B. 632; 38 Digest 202, 382; and *Clark v. Epsom R.D.C.*, [1929] 1 Ch. 287; Digest Supp. See also s. 93, *post*.

**66. Public analysts.**—(1) Every Food and Drugs authority shall appoint in accordance with the provisions of this section one or more persons (in this Act referred to as "public analysts") to be analysts of food and drugs within their area. [372]

As to Food and Drugs authorities, see s. 64, *ante*.

(2) No person shall be appointed a public analyst unless he possesses either the prescribed qualifications or such other qualifications as the Minister may approve, and no person shall be appointed public analyst for any area who is engaged directly or indirectly in any trade or business connected with the sale of food or drugs in that area. [373]

The Minister is the Minister of Health; see s. 100 (1), *post*.

(3) The appointment of a public analyst and the terms of his appointment and the removal of a public analyst shall require the approval of the Minister. [374]

(4) A Food and Drugs authority shall pay to a public analyst such remuneration as may be agreed, and such remuneration may be expressed to be payable either in addition to any fees received by him under this Part of this Act, or on condition that any fees so received by him are paid over by him to the authority. [375]

(5) Regulations prescribing qualifications for the purposes of subsection (2) of this section shall be laid before Parliament as soon as may be after they are made. [376]

(6) A Food and Drugs authority who appoint only one public analyst may appoint also a deputy to act during any vacancy in the office of public analyst, or during the absence or incapacity of the holder of the office.

The foregoing provisions of this section with respect to the qualifications, appointment, removal and remuneration of a public analyst shall apply also in relation to a deputy public analyst, and any reference in the subsequent sections of this Act to a public analyst shall be construed as including a reference to a deputy public analyst appointed under this section. [377]

This section replaces s. 15 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 894).

**67. Facilities for examination of food and drugs.**—A county council or local authority may provide facilities for bacteriological and other examinations of samples of food and drugs. [378]

This section replaces, as regards milk, part of s. 10 (1) of the Milk and Dairies (Consolidation) Act, 1915 (8 Halsbury's Statutes 870).

As to "local authority," see s. 64, *ante*.

**68. Powers of sampling.**—(1) An authorised officer of a Food and Drugs authority, or of a local authority not being a Food and Drugs authority, may exercise such powers of procuring samples of food and drugs for analysis, or for bacteriological or other examination, as are conferred upon him by this section, and any such officer is in this Act referred to as a "sampling officer." [379]

This subsection and sub-s. (2), *infra*, replace s. 16 (1) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 894).

"Authorised officer" is defined in s. 100 (1), *post*. As to Food and Drugs authorities and local authorities, see s. 64, *ante*.

(2) A sampling officer may purchase samples of any food or drug :

Provided that nothing in this section shall be construed as authorising any purchase or sale of drugs in contravention of the Dangerous Drugs Acts, 1920 to 1932, or regulations made thereunder. [380]

See note to sub-s. (1), *supra*.

For the Dangerous Drugs Acts, 1920 to 1932, see 11 Halsbury's Statutes 756 *et seq.*, and 25 Halsbury's Statutes 295.

(3) A sampling officer may take samples of—

(a) any butter or cheese, or substances resembling butter or cheese, exposed for sale and not marked in the manner in which margarine, milk-blended butter or margarine-cheese is required to be marked under this Act ;

(b) any food, or substance capable of being used in the preparation of food, found on premises which he has entered in the execution of his duties under this Act. [381]

This subsection replaces s. 16 (3) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 894).

(4) A sampling officer, or an inspector of the Minister, may take samples of milk at any dairy, or at any time while it is in transit, or at the place of delivery to the purchaser, consignee or consumer.

An authorised officer of a county council who, as respects the whole

or some part of their county, are not the Food and Drugs authority may exercise the like powers throughout the county or, as the case may be, in that part thereof, and, for the purposes of the subsequent sections of this Act, such an officer shall be deemed to be a sampling officer. [382]

This subsection replaces s. 8 (1) of the Milk and Dairies (Consolidation) Act, 1915 (8 Halsbury's Statutes 868).

The Minister is the Minister of Health; see s. 100 (1), *post*.

(5) Where milk sold or exposed for sale within the area of any council is obtained from a dairy situate outside that area, the medical officer of health or any other authorised officer of the council may by notice in writing to the medical officer of health or other authorised officer of a Food and Drugs authority within whose area the dairy is situate, or through whose area the milk passes in transit, request him to procure samples of the milk at that dairy, or while it is in transit, and it shall be the duty of an officer who receives such a notice to procure, as soon as is practicable, samples of the milk in question and to forward those samples to the officer who gave the notice, or to such person as that officer may direct, and, for the purposes of this Act, samples so procured shall be deemed to have been procured within the area for which the last-mentioned officer acts. [383]

This subsection replaces s. 8 (3), (4) of the Milk and Dairies (Consolidation) Act, 1915 (8 Halsbury's Statutes 869).

(6) Any power of an authorised officer in respect of procuring samples of milk may be exercised at a place outside the area of the council whose officer he is, if the Food and Drugs authority of the area within which that place is situate have consented to samples of milk being procured within their area by officers of the first-mentioned council, and, for the purposes of this Act, any samples so procured shall be deemed to have been procured within the area for which the officer in question acts.

A Food and Drugs authority shall not unreasonably withhold consent for the purposes of this subsection and any question whether or not consent is unreasonably withheld shall be referred to and determined by the Minister. [384]

This subsection is new.

See the notes to sub-s. (1), *supra*.

(7) A sampling officer may, at the request or with the consent of the purchaser, consignee or consumer, take at the place of delivery samples of any food delivered, or about to be delivered, to the purchaser, consignee or consumer in pursuance of a contract for the sale thereof to him:

Provided that this subsection shall not apply in relation to milk. [385]

This subsection replaces s. 16 (2) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 894).

As to "the place of delivery," see *Filshie v. Evington*, [1892] 2 Q. B. 200; 25 Digest 72, 16; *McNair v. Cave*, [1903] 1 K. B. 24; 25 Digest 71, 75.

(8) If a sampling officer has reason to believe that any container forwarded by a public conveyance contains margarine, margarine-cheese or milk-blended butter which is not consigned in accordance with the provisions of this Act, he may examine and take samples of the contents of that container. [386]

This subsection replaces s. 16 (4) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 894).



(9) In the exercise on any railway premises of the powers conferred upon him by this section in relation to the taking of samples of milk in course of transit, an officer shall conform to such reasonable requirements of the railway company as are necessary to prevent the working of the traffic of the company being obstructed or interfered with. [387]

This subsection replaces s. 8 (6) of the Milk and Dairies (Consolidation) Act, 1915 (8 Halsbury's Statutes 869).

**69. Right to have samples analysed.**—(1) If a sampling officer who has procured a sample of any food or drug considers that it should be analysed, he shall submit it to be analysed by the public analyst for the area in which the sample was, or is deemed to have been, procured. [388]

As to "sampling officer," see s. 68 (1), *ante*.

For definitions of "food" and "drug," see s. 100 (1), *post*.

(2) A person, other than a sampling officer, who has purchased any food or drug may submit a sample of it to be analysed by the public analyst for the area in which the purchase was made. [389]

As to "public analyst," see s. 66 (1), *ante*.

(3) The public analyst shall analyse as soon as practicable any sample sent to him in pursuance of this section, and give to the person by whom it was submitted a certificate in the prescribed form specifying the result of the analysis :

Provided that, in the case of a sample submitted by a person not being an officer of the Food and Drugs authority, the analyst may demand in advance such fee, not exceeding one guinea, as may be fixed by that authority.

In giving his certificate, the analyst shall have regard to the provisions of any regulation made under section twenty-three of this Act. [390]

As to Food and Drugs authorities, see s. 64, *ante*.

(4) If the office of public analyst for the area in question is vacant, the sample shall be submitted to the public analyst for some other area and, upon payment to him of such sum as may be agreed, he shall analyse it and give to the person by whom it was submitted such a certificate as aforesaid. [391]

This section replaces s. 17 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 895).

**70. Division of, and dealings with, samples.**—(1) A person purchasing a sample of any food or drug with the intention of submitting it to be analysed by a public analyst, or taking a sample of food on any premises with the intention of submitting it to be so analysed, shall, after the purchase has been completed or the sample has been taken, forthwith inform the seller or his agent who sold the sample, or, as the case may be, the occupier of the premises or the person for the time being in charge thereof, of his intention to have the sample analysed by the public analyst, and shall then and there divide it into three parts, each part to be marked, and sealed or fastened up, in such manner as its nature will permit, and shall—

(a) if required so to do, deliver one part to the seller or his agent, or, as the case may be, to the occupier of the premises or the person for the time being in charge thereof ;

- (b) retain one part for future comparison ; and
- (c) if he thinks fit to have an analysis made, submit one part to the public analyst :

Provided that, in relation to samples taken in such circumstances as are mentioned in either of the two next succeeding subsections, the foregoing provisions with respect to the giving of information and the manner of dealing with samples shall have effect as modified by those subsections. [392]

This subsection replaces s. 18 (1) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 896).

The notification to the seller is a condition precedent to a prosecution (*Wheeler v. Webb* (1887), 51 J. P. 661 ; 25 Digest 74, 38).

As to the division into parts, see *Mason v. Cowdary*, [1900] 2 Q. B. 419 ; 25 Digest 74, 43 ; *Smith v. Savage*, [1905] 2 K. B. 88 ; 25 Digest 75, 45. Each part must be sufficient to enable a proper analysis to be made (*Lowery v. Hallard*, [1906] 1 K. B. 398 ; 25 Digest 74, 42).

As to marking, sealing and fastening up, see *Suckling v. Parker*, [1906] 1 K. B. 527 ; 25 Digest 103, 257 ; *Winterbottom v. Allwood*, [1915] 2 K. B. 608 ; 25 Digest 75, 50.

It was held in *Twynham v. Badcock*, [1932] 2 K. B. 549 ; Digest Supp. ; that on the prosecution of a previous seller after the conviction of the retailer under Art. 7 of the Public Health (Preservatives, etc., in Food) Regulations, 1925, it was unnecessary that a second sample should be divided and analysed.

(2) A person taking a sample of any food while it is in transit or at the place of delivery to the purchaser, consignee or consumer shall, if he intends to submit it to be analysed by a public analyst, deal with it in the manner provided by the preceding subsection, except that he shall retain the first-mentioned part of the sample unless the name and address of the consignor appear on the container containing the article sampled, in which case he shall forward that part of the sample to the consignor by registered post or otherwise, together with a notice informing that person that he intends to have part of the sample analysed by the public analyst. [393]

This subsection replaces s. 18 (2) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 896).

(3) A person purchasing a sample of any food or drug from an automatic machine shall, if he intends to submit it to be analysed by a public analyst, deal with it in the manner provided by subsection (1) of this section, except that he shall send the first mentioned part of the sample by registered post or otherwise, together with such a notice as aforesaid—

- (a) if the name and address of a person stated to be the proprietor of the machine appear thereon, to that person ; and
- (b) in any other case, to the occupier of the premises on which the machine stands or to which it is affixed. [394]

This subsection is new.

**71. Special provisions as to the sampling of milk and proceedings subsequent thereto.**—(1) The provisions of this Act relating to the procuring of samples by sampling officers, and proceedings in connection therewith, shall, in relation to milk, have effect subject to the provisions of the Third Schedule to this Act. [395]

This subsection replaces s. 21 (1) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 898).

For the provisions of this Act relating to the procuring of samples by sampling officers, see s. 68, *ante*.

(2) It shall be a defence for a defendant charged with any offence under this Act, or under Milk and Dairies Regulations or Food Regulations, in respect of a sample of milk taken after the milk has left his possession, to prove that the churn or other vessel in which the milk was contained was effectively closed and sealed at the time when it left his possession, but had been opened before the person by whom the sample was taken had access to it. [396]

This subsection replaces s. 9 (3) of the Milk and Dairies (Amendment) Act, 1922 (8 Halsbury's Statutes 882).

(3) So much of any contract as requires a purveyor of milk, on a sample of milk being procured under this Act, to send to the person from whom he obtained the milk any part of such sample, or to give to that person notice that a sample has been so procured, shall be void. [397]

This subsection replaces s. 21 (2) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 898).

**72. Power of Ministers of Health and Agriculture to have foods analysed and examined.**—(1) The Minister, in relation to any matter appearing to him to affect the general interests of consumers, and the Minister of Agriculture and Fisheries, in relation to any matter appearing to him to affect the general interests of agriculture in the United Kingdom, may direct an officer of his department to procure samples of any specified food, and thereupon the officer shall have all the powers of a sampling officer, and this Act shall apply as if he were a sampling officer, except that—

- (a) if he intends to submit any sample procured by him to be analysed, he shall divide it into four parts, and shall deal with three of those parts in the manner directed by the last but one foregoing section, and send the fourth part to the Minister concerned; and
- (b) any fee for analysis shall be payable to the analyst by the Food and Drugs authority of the area in which the sample is procured. [398]

(2) The Minister concerned shall communicate the result of the analysis of any such sample to the Food and Drugs authority and, thereupon, they shall have the like duty to cause proceedings to be taken as if one of their officers had procured the sample and sent it to be analysed. [399]

This section replaces s. 19 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 897).

"The Minister" is the Minister of Health; see s. 100 (1), *post*.

As to the powers of sampling officers, see ss. 63 *et seq.*, *ante*.

As to Food and Drugs authorities, see s. 64, *ante*.

**73. Powers of Minister of Agriculture as to inspection of premises where margarine, milk-blended butter, &c., produced or subjected to treatment.**—(1) An officer of the Minister of Agriculture and Fisheries shall, on producing, if so required, some duly authenticated document showing his authority, have power to enter at all reasonable times any premises registered under section thirty-four of this Act, and to inspect any process of manufacture, blending, reworking, or treatment carried on therein, and to take samples of any butter, margarine, margarine-cheese, or milk-blended butter, or of any substance capable of being

used in the manufacture, treatment or adulteration of any of those articles. [400]

This subsection replaces, so far as concerns the Minister of Agriculture and Fisheries, s. 22 (1) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 898).

As to the production of authority by officers, see *Payne v. Hack* (1893), 58 J. P. 165; 25 Digest 72, 23.

(2) If the Minister of Agriculture and Fisheries has reason to believe—

(a) that any process of manufacture, blending, reworking, or treatment, or any wholesale dealing, being a process or dealing which under this Act may not be carried on except on registered premises, is being carried on on any premises not registered for the purpose in question; or

(b) that on any premises butter is by way of trade either made or stored, and that for the purposes of this Act inspection is desirable,

he may specially authorise any of his officers to enter the premises, and in that case the officer shall have the like powers of entry, inspection, and sampling as if the premises were registered. [401]

This subsection replaces s. 22 (3) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 898).

See *Monro v. Central Creamery Co., Ltd.*, [1912] 1 K. B. 578.

**74. Quarterly reports by analysts.**—(1) Every public analyst shall, as soon as may be after the last day of March, the last day of June, the last day of September and the last day of December in every year, report to the authority by whom he was appointed the number of articles which have been analysed by him under this Act in his capacity of public analyst for their area during the preceding quarter of a year and the result of each analysis. [402]

(2) Every Food and Drugs authority shall transmit to the Minister, at such time as he may direct, a copy of each quarterly report received by them from a public analyst. [403]

This section replaces s. 25 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 899).

**75. Expenses.**—(1) Expenses incurred under this Act by the Common Council of the City of London, or by the council of a metropolitan borough, shall be defrayed out of the general rate. [404]

(2) Expenses incurred under this Act by the London County Council shall be defrayed as expenses for general county purposes. [405]

(3) Expenses incurred by a county council as a Food and Drugs authority shall, if the council are not the Food and Drugs authority for the whole county, be defrayed as expenses for special county purposes charged on those county districts the councils of which are not Food and Drugs authorities. [406]

(4) Expenses incurred under this Act by a sampling officer in procuring samples and causing samples to be analysed shall be defrayed by the authority whose officer he is:

Provided that expenses incurred by an officer in complying with a notice given to him under subsection (5) of section sixty-eight of this Act shall be borne by the authority whose officer gave the notice, and

any dispute as to the amount of any such expenses shall be referred to and determined by the Minister. [407]

(5) A county council may, as part of their expenses as a Food and Drugs authority, make a contribution towards any expenses incurred by the council of a county district within the county, not being a Food and Drugs authority, in connection with the procuring and analysis or examination of samples and the institution of proceedings under this Act. [408]

This section replaces s. 26 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 899), and, so far as concerns the proviso to sub-s. (4), part of s. 8 (4) of the Milk and Dairies (Consolidation) Act, 1915 (8 Halsbury's Statutes 889). As to "Food and Drugs authority," see s. 64, *ante*.

## 76. Provisions as to port health authorities and joint boards.—

(1) Orders made by the Minister under section three, section six or section eight, as the case may be, of the Public Health Act, 1936, may—

- (a) assign to a port health authority any of the functions, rights and liabilities of a local authority or Food and Drugs authority under this Act ;
- (b) constitute a united district for the purposes of any functions under this Act which are functions of a local authority, whether as a Food and Drugs authority or otherwise ; or
- (c) empower councils of counties and county boroughs to discharge through a joint board any of their functions, in whatever capacity, under this Act,

and amending orders may be made by the Minister accordingly under section nine of the said Act.

For the purposes of section three hundred and eleven of the said Act, as incorporated in this Act, orders made under that Act by virtue of this subsection shall be deemed to be made under this Act. [409]

For the Public Health Act, 1936, ss. 3, 6, 8, see 29 Halsbury's Statutes 324, 326, 327. For s. 9 of that Act, see *ibid.* 328 ; and for s. 311 of that Act, see *ibid.* 520.

(2) The functions, rights and liabilities which the Minister may by an order under subsection (1) of section six of the Public Health (London) Act, 1936, vest in or impose on the port health authority of the port of London shall include any functions, rights and liabilities of a local authority or Food and Drugs authority under this Act, and the provisions and byelaws which any such order may extend as mentioned in subsection (3) of the said section shall include any of the provisions of this Act which it is the function of a local authority or Food and Drugs authority to carry into effect and any byelaws made under any of those provisions, and any order previously made under the said section six may be amended accordingly.

For the purposes of this subsection, the making of byelaws under section fifteen of this Act shall, notwithstanding anything in the proviso to subsection (1) of that section, be deemed to be a function of a local authority. [410]

For the Public Health (London) Act, 1936, s. 6 (1), see 30 Halsbury's Statutes 448.

## *Entry, obstruction, &c.*

77. Power to enter premises.—(1) Subject to the provisions of this section, any authorised officer of a council shall, on producing, if so



required, some duly authenticated document showing his authority, have a right to enter any premises at all reasonable hours—

- (a) for the purpose of ascertaining whether there is or has been on, or in connection with, the premises any contravention of the provisions of this Act or of any regulations or byelaws made thereunder, being provisions which the council are required or empowered to enforce; and
- (b) generally for the purpose of the performance by the council of their functions under this Act or any such regulations or byelaws:

Provided that admission to any premises used only as a private dwelling-house shall not be demanded as of right unless twenty-four hours' notice of the intended entry has been given to the occupier.

[411]

*Cf.* s. 2 of the Milk and Dairies (Consolidation) Act, 1915 (8 Halsbury's Statutes 866), and s. 22 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 898), both repealed by this Act.

"Authorised officer" is defined in s. 100 (1), *post*.

(2) If it is shown to the satisfaction of a justice of the peace on sworn information in writing—

- (a) that admission to any premises has been refused, or that refusal is apprehended, or that the premises are unoccupied or the occupier is temporarily absent, or that the case is one of urgency, or that an application for admission would defeat the object of the entry; and
- (b) that there is reasonable ground for entry into the premises for any such purpose as aforesaid,

the justice may by warrant under his hand authorise the council by any authorised officer to enter the premises, if need be by force, and, where the justice is satisfied that there is reasonable ground for supposing that the premises in question are unregistered premises used for the manufacture of artificial cream contrary to the provisions of this Act, the warrant may also authorise a search for and the seizure of any machine suitable for use in the manufacture of artificial cream:

Provided that such a warrant shall not be issued unless the justice is satisfied either that notice of the intention to apply for a warrant has been given to the occupier, or that the premises are unoccupied or that the occupier is temporarily absent, or that the case is one of urgency, or that the giving of such notice would defeat the object of the entry. [412]

(3) An authorised officer entering any premises by virtue of this section, or of a warrant issued thereunder, may take with him such other persons as may be necessary, and on leaving any unoccupied premises which he has entered by virtue of such a warrant shall leave them as effectively secured against trespassers as he found them. [413]

(4) Every warrant granted under this section shall continue in force for a period of one month. [414]

(5) If any person who, in compliance with the provisions of this section, or of a warrant issued thereunder, is admitted into a factory or workplace discloses to any person any information obtained by him in the factory or workplace with regard to any manufacturing process or trade secret, he shall, unless such disclosure was made in the performance

of his duty, be liable to a fine not exceeding one hundred pounds, or to imprisonment for a term not exceeding three months. [415]

(6) Nothing in this section shall authorise any person, except with the permission of the local authority under the Diseases of Animals Acts, 1894 to 1937, to enter any cowshed or other place in which an animal affected with any disease to which those Acts apply is kept and which is situated in a place declared under those Acts to be infected with such a disease. [416]

*Cf.* the proviso to s. 2 of the Milk and Dairies (Consolidation) Act, 1915 (8 Halsbury's Statutes 866), repealed by this Act.

For the Diseases of Animals Acts, 1894—1937, see 1 Halsbury's Statutes 389 *et seq.*; 28 Halsbury's Statutes 7; and 30 Halsbury's Statutes 93.

(7) In the exercise on any railway premises of the powers conferred upon him by this section, an officer shall conform to such reasonable requirements of the railway company as are necessary to prevent the working of the traffic of the company being obstructed or interfered with. [417]

*Cf.* s. 8 (6) of the Milk and Dairies (Consolidation) Act, 1915 (8 Halsbury's Statutes 869), repealed by this Act.

**78. Penalty for obstructing execution of Act.**—(1) A person who wilfully obstructs any person acting in the execution of this Act or of any regulation, byelaw, order or warrant made or issued thereunder, shall be liable to a fine not exceeding five pounds :

Provided that, if the court is satisfied that he committed the offence with intent to prevent the discovery of some other offence under this Act, or if he has within the twelve months last preceding been convicted of an offence under this subsection, he shall be liable to a fine not exceeding twenty pounds or to imprisonment of a term not exceeding one month. [418]

This subsection replaces s. 14 of the Milk and Dairies (Consolidation) Act, 1915 (8 Halsbury's Statutes 871), and s. 24 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 899).

(2) If a sampling officer applies to purchase any food or drug exposed for sale, or on sale by retail, and tenders the price for the quantity which he requires as a sample, and the person exposing the food or drug for sale, or having it for sale, refuses to sell to the officer such quantity thereof as aforesaid, or if the seller or consignor, or any person having for the time being the charge, of any food of which an officer is empowered to take a sample refuses to allow the officer to take the quantity which he requires as a sample, the person so refusing shall, for the purposes of the preceding subsection, be deemed to have wilfully obstructed the officer :

Provided that, where any food or drug is exposed for sale in an unopened container duly labelled, no person shall be required to sell it except in the unopened container in which it is contained. [419]

This subsection replaces s. 16 (5) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 895).

As to sampling officers, see s. 68, *ante*.

(3) A person who fails to give to any person acting in the execution of this Act or of any regulation, byelaw, order or warrant made or issued thereunder, any assistance which that person may reasonably request him to give, or any information which that person is expressly authorised by this Act to call for or may reasonably require, or who, when required to give any such information, knowingly makes any misstatement in respect thereof, shall be liable to a fine not exceeding five pounds :

Provided that nothing in this section shall be construed as requiring a person to answer any question or give any information, if to do so might incriminate him. [420]

*Legal Proceedings.*

**79. Penalties.**—A person guilty of an offence under this Act shall, unless a special penalty for that offence is provided by this Act, be liable in the case of a first offence, to a fine not exceeding twenty pounds and, in the case of a subsequent offence, to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding three months, or to both such a fine and such imprisonment. [421]

This section replaces part of s. 27 (3) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 900).

**80. Prosecutions.**—(1) Subject to the provisions of this Act, all offences under this Act and regulations and byelaws made thereunder may be prosecuted under the Summary Jurisdiction Acts :

Provided that—

- (a) where a sample has been procured under this Act, no prosecution in respect of the article sampled shall be commenced after the expiration of twenty-eight days from the time when the sample was procured unless the justice of the peace before whom the information is laid, on being satisfied on oath that having regard to the circumstances of the particular case it was not practicable to lay the information at an earlier date, gives a certificate to that effect, and in no case shall the prosecution be commenced after the expiration of forty-two days from the said time ;
- (b) the time within which proceedings may be commenced under section eighty-five of this Act in respect of the giving of a false warranty shall be twelve months instead of six months. [422]

This subsection replaces s. 27 (1) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 900).

(2) Subject as hereinafter provided, where a sample has been procured under this Act, any proceedings in respect of the article sampled shall be taken before a court having jurisdiction in the place where the sample was procured :

Provided that—

- (a) where a sample procured within one area is for the purposes of this Act deemed to have been procured within another area, proceedings may, at the option of the prosecutor, be taken either before a court having jurisdiction within the area within which the sample was procured, or before a court having jurisdiction within the area within which it is deemed to have been procured ; and
- (b) where the article sampled was sold and actually delivered to the purchaser, proceedings may, if the prosecutor so elects, be taken before a court having jurisdiction at the place of delivery. [423]

This subsection replaces s. 27 (2) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 900), and part of s. 8 (4) of the Milk and Dairies (Consolidation) Act, 1915 (8 Halsbury's Statutes 889).

See *R. v. Beacontree J.J.*, [1915] 3 K. B. 388 ; 25 Digest 105, 284 (proceedings taken in another division of the same county).

(3) In any proceedings under this Act in respect of an article sampled, the summons shall not be made returnable less than fourteen days from the day on which it is served, and a copy of any certificate of analysis obtained on behalf of the prosecutor, and of any certificate given by a justice under proviso (a) to subsection (1) of this section, shall be served with the summons. [424]

This subsection replaces s. 27 (5) and s. 28 (1) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 900, 901).

(4) In any proceedings under this Act, where a sample has been procured in such circumstances that its division into parts is required by this Act, the part of the sample retained by the person who procured it shall be produced at the hearing. [425]

This subsection replaces s. 28 (4) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 901).

Failure to produce the third sample at the hearing may be fatal, even though it has been lost accidentally (*Hutchinson v. Stevenson* (1902), 39 Sc. L. R. 789; 25 Digest 103, g; but see *Suckling v. Parker*, [1906] 1 K. B. 527; 25 Digest 103, 257; and *Winterbottom v. Allwood*, [1915] 2 K. B. 608; 25 Digest 75, 50).

**81. Evidence of certificates of analysis, and presumptions.**—(1) In any proceedings under this Act, the production by one of the parties of a document purporting to be a certificate of a public analyst in the prescribed form, or of a document supplied to him by the other party as being a copy of such a certificate, shall be sufficient evidence of the facts stated therein, unless, in the first-mentioned case, the other party requires that the analyst shall be called as a witness. [426]

This subsection replaces s. 13 of the Milk and Dairies (Amendment) Act, 1922 (8 Halsbury's Statutes 883), and s. 28 (3) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 901).

(2) In any such proceedings, if a sample of milk has been taken by an officer of one authority at the request of an officer of another authority, a document purporting to be a certificate signed by the officer who took the sample and stating that the provisions of this Act with respect to the manner in which samples are to be dealt with were complied with shall, if a copy thereof has been served on the defendant with the summons, be sufficient evidence of compliance with those provisions, unless the defendant requires that the officer shall be called as a witness. [427]

This subsection replaces s. 8 (5) of the Milk and Dairies (Consolidation) Act, 1915 (8 Halsbury's Statutes 889).

(3) In any such proceedings, if a defendant intends to produce a certificate of a public analyst, or under subsection (1) of this section, to require that the public analyst shall be called as a witness, or under the last preceding subsection to require that a sampling officer shall be called as a witness, notice of his intention together, in the first-mentioned case, with a copy of the certificate shall be given to the other party at least three clear days before the day on which the summons is returnable, and, if this requirement is not complied with, the court may, if it thinks fit, adjourn the hearing on such terms as it deems proper. [428]

This subsection replaces s. 28 (2) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 901).

(4) For the purposes of this Act and of any regulations made thereunder—

(a) articles commonly used for human consumption shall, if sold or offered, exposed or kept for sale, be presumed, until the

contrary is proved, to have been sold, or, as the case may be, to have been or to be intended for sale, for human consumption ;

- (b) any article commonly used for human consumption which is found on premises used for the preparation, storage, or sale of that article and any article commonly used in the manufacture of products for human consumption which is found on premises used for the preparation, storage or sale of those products, shall be presumed, until the contrary is proved, to be intended for sale, or for manufacturing products for sale, for human consumption ;
- (c) any substance capable of being used in the composition or preparation of any article commonly used for human consumption which is found on premises on which that article is prepared, shall, until the contrary is proved, be presumed to be intended for such use. [429]

This subsection replaces part of s. 116 of the Public Health Act, 1875 (13 Halsbury's Statutes 872) ; s. 1 (2) of the Public Health (Regulations as to Food) Act, 1907 (8 Halsbury's Statutes 868) ; s. 19 (2) of the Milk and Dairies (Consolidation) Act, 1915 (8 Halsbury's Statutes 874) ; and s. 5 (2) (a) of the Artificial Cream Act, 1929 (8 Halsbury's Statutes 910).

### **82. Power of court to require analysis by Government Chemist.—**

(1) The court before which any proceedings are taken under this Act may, if it thinks fit, and upon the request of either party shall, cause the part of any sample produced before the court under subsection (4) of the last but one preceding section to be sent to the Government Chemist, who shall make an analysis, and transmit to the court a certificate of the result thereof, and the costs of the analysis shall be paid by the prosecutor or the defendant as the court may order. [430]

(2) If, in a case where an appeal is brought, no action has been taken under the preceding subsection, the provisions thereof shall apply also in relation to the court by which the appeal is heard. [431]

This section replaces s. 31 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 904).

**83. Defence available to defendant where some other person is responsible for the commission of the offence charged.—**(1) A person against whom proceedings are brought under this Act shall, upon information duly laid by him and on giving to the prosecution not less than three clear days' notice of his intention, be entitled to have any person to whose act or default he alleges that the contravention of the provisions in question was due brought before the court in the proceedings, and, if, after the contravention has been proved, the original defendant proves that the contravention was due to the act or default of that other person, that other person may be convicted of the offence, and, if the original defendant further proves that he has used all due diligence to secure that the provisions in question were complied with, he shall be acquitted of the offence. [432]

This subsection replaces s. 27 (6) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 900).

(2) Where a defendant seeks to avail himself of the provisions of the preceding subsection—

- (a) the prosecution, as well as the person whom the defendant charges with the offence, shall have the right to cross-examine him, if he gives evidence, and any witness called by him in support of his pleas, and to call rebutting evidence ;



- (b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party thereto. [433]

(3) Where it appears to the authority concerned that an offence has been committed in respect of which proceedings might be taken under this Act against some person and the authority are reasonably satisfied that the offence of which complaint is made was due to an act or default of some other person and that the first-mentioned person could establish a defence under subsection (1) of this section, they may cause proceedings to be taken against that other person without first causing proceedings to be taken against the first-mentioned person.

In any such proceedings the defendant may be charged with and, on proof that the contravention was due to his act or default, be convicted of, the offence with which the first-mentioned person might have been charged. [434]

#### 84. Conditions under which a warranty may be pleaded as defence.—

(1) Subject to the provisions of this section, in the case of any prosecution under Part I, Part II or Part III of this Act in respect of selling, exposing or offering for sale, or having in possession for sale, an article which was not of a nature, substance or quality entitling a person to sell or otherwise deal with it under the description or in the manner under, or in, which the defendant dealt with it, it shall be a defence for the defendant to prove—

- (a) that he purchased it as being an article of such a nature, substance and quality as would have so entitled him and with a written warranty to that effect; and  
(b) that he had no reason to believe at the time of the commission of the alleged offence that it was otherwise; and  
(c) that it was then in the same state as when he purchased it. [435]

(2) A warranty shall only be a defence to proceedings under this Act if—

- (a) the defendant has within seven days of the service of the summons sent to the prosecutor a copy of the warranty with a notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it, and has also sent a like notice of his intention to that person; and  
(b) in the case of a warranty given by a person resident outside the United Kingdom, the defendant proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained therein; and  
(c) in the case of a prosecution in respect of a sample of milk, the defendant has within sixty hours after the sample was procured served such a notice as is mentioned in paragraph (2) of the Third Schedule to this Act. [436]

(3) Where the defendant is a servant of the person who purchased the article under a warranty, he shall be entitled to rely on the provisions of this section in the same way as his employer would have been entitled to do if he had been the defendant. [437]

(4) The person by whom the warranty is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the

court may, if it thinks fit, adjourn the hearing to enable him to do so. [438]

(5) For the purposes of this and the next succeeding section, a name or description entered in an invoice shall be deemed to be a written warranty that the food or drug to which the entry refers is of such a nature, substance and quality that a person can sell, or otherwise deal with it, under that name or description without contravening any of the provisions of this Act or of regulations made thereunder. [439]

This section replaces s. 29 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 902).

See *Pugh v. Williams* (1917), 81 J. P. 159; 25 Digest 99, 226.

### 85. Offences in relation to warranties and certificates of analysis.—

(1) A defendant who in any proceedings under this Act wilfully applies to any food or drug a warranty or certificate of analysis given in relation to any other food or drug shall be guilty of an offence. [440]

(2) A person who, in respect of any food or drug sold by him, gives to the purchaser a false warranty in writing, shall be guilty of an offence, unless he proves that when he gave the warranty he had reason to believe that the statements or description contained therein were accurate. [441]

(3) Where the defendant in a prosecution under this Act relies successfully on a warranty given to him or to his employer, any proceedings under the last preceding subsection in respect of the warranty may, at the option of the prosecutor, be taken either before a court having jurisdiction in the place where a sample of the food or drug to which the warranty relates was procured, or before a court having jurisdiction in the place where the warranty was given. [442]

This section replaces s. 30 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 903).

For penalties for offences, see s. 79, *ante*.

A limited company may be convicted of giving a false warranty under this section; see *Chuter v. Freeth & Pocock, Ltd.*, [1911] 2 K. B. 832; 25 Digest 100, 237.

### *Compensation.*

86. Disputes as to compensation.—Where by any of the foregoing provisions of this Act provision is made for the payment of compensation to any person, any dispute arising as to the fact of damage or loss, or as to the amount of compensation, shall be determined by arbitration under this Act:

Provided that, if the compensation claimed does not exceed fifty pounds, all questions as to the fact of damage or loss, liability to pay compensation and the amount of compensation may on the application of either party be determined by, and any compensation awarded may be recovered before, a court of summary jurisdiction. [443]

### *Appeals.*

87. Appeals to courts of summary jurisdiction against decisions of authorities.—(1) Where any enactment in, or regulation made under, this Act provides for an appeal to a court of summary jurisdiction against a refusal or other decision of an authority, the procedure shall be by way of complaint for an order, and the Summary Jurisdiction Acts shall apply to the proceedings. [444]

(2) The time within which such an appeal may be brought shall be twenty-one days from the date on which notice of the authority's refusal

or other decision was served upon the person desiring to appeal, and for the purposes of this subsection the making of the complaint shall be deemed to be the bringing of the appeal. [445]

(3) In any case where such an appeal lies, the document notifying to the person concerned the decision of the authority in the matter shall state the right of appeal to a court of summary jurisdiction and the time within which such an appeal may be brought. [446]

**88. Appeals to quarter sessions against decisions of courts of summary jurisdiction.**—Where a person aggrieved by an order, determination or other decision of a court of summary jurisdiction under this Act, or under any regulation made under this Act, is not by any other enactment authorised to appeal to a court of quarter sessions, he may appeal to such a court. [447]

**89. Effect of decision of court upon an appeal.**—Where upon an appeal under this Act a court varies or reverses any decision of an authority, it shall be the duty of the authority to give effect to the order of the court, and, in particular, to grant any necessary licence and to make any necessary entry in any register. [448]

**90. Right to carry on business in certain cases while appeal is pending.**—(1) Where a decision of an authority under this Act refusing, cancelling, suspending or revoking registration of a licence, or a decision of a court of summary jurisdiction on appeal against such a decision, makes it unlawful for a person to carry on any business which he, or his immediate predecessor in the business, was lawfully carrying on at the date when the decision of the authority was given, or to use any premises for any purpose for which he, or his immediate predecessor in the business was lawfully using them at the said date, he may carry on that business and use those premises for that purpose until the time for appealing has expired and, if an appeal is lodged, until the appeal is finally disposed of or abandoned, or has failed for want of prosecution. [449]

(2) The foregoing provisions with respect to the right to continue to carry on a business and to use premises shall apply also where the decision of a court in proceedings in respect of an offence under this Act makes it unlawful for a person to carry on a business which he was lawfully carrying on immediately before the decision was given, or to use any premises for any purpose for which he was then lawfully using them. [450]

*Cf. the last two paragraphs of s. 2 (1) of the Milk and Dairies (Amendment) Act, 1922 (8 Halsbury's Statutes 879), repealed by this Act.*

#### *Miscellaneous.*

**91. Byelaws.**—(1) The Minister shall be the confirming authority as respects byelaws made under this Act. [451]

(2) Section two hundred and seventy-seven of the Public Health (London) Act, 1936, so far as it relates to byelaws made under that Act by the Common Council of the City of London and the port health authority of the port of London shall, with any necessary adaptation, apply in relation to byelaws made under this Act by the Common Council or, by virtue of an order of the Minister under section seventy-six of this Act, by the port health authority. [452]

*The Minister is the Minister of Health; see s. 100 (1), post.*

*For the Public Health (London) Act, 1936, s. 277, see 30 Halsbury's Statutes 590.*

**92. Supplementary provisions as to certain regulations.**—(1) This section applies to all Food Regulations, Milk and Dairies Regulations and Bread and Flour Regulations made under this Act. [453]

As to Food Regulations, see s. 8, *ante*; as to Milk and Dairies Regulations, see s. 20, *ante*; and as to Bread and Flour Regulations, see s. 30, *ante*.

(2) Without prejudice to the generality of the provisions under which they are made, the regulations may—

- (a) provide for the taking and examination of samples;
- (b) apply, as respects matters to be dealt with by the regulations, any provision in any Act (including this Act) dealing with the like matters, with the necessary modifications and adaptations;
- (c) provide for an appeal to a court of summary jurisdiction against any refusal or other decision of an authority by whom the regulations are to be enforced and executed;
- (d) authorise the making of charges for the purposes of the regulations or for any services performed thereunder, and provide for the recovery of charges so made;
- (e) contain provisions for imposing on persons offending against the regulations penalties not exceeding the maximum penalties specified in section seventy-nine of this Act;
- (f) make such ancillary and incidental provisions as appear to the Minister to be necessary or desirable. [454]

(3) The regulations shall specify the authorities, whether county councils, local authorities, Food and Drugs authorities or port health authorities, by whom they are to be enforced and executed, and may provide for the giving of assistance and information by any authority concerned in the administration of the regulations, or of this Act, to any other authority so concerned for the purposes of their respective duties thereunder. [455]

(4) Before making the regulations, the Minister shall consult with such representative organisations as he thinks fit. [456]

The Minister is the Minister of Health; see s. 100 (1), *post*.

(5) The regulations shall be laid before Parliament as soon as may be after they are made. [457]

(6) Any expenses incurred by a county council in the enforcement and execution of the regulations shall, if the Minister by order so directs, be defrayed as expenses for special county purposes charged on such part of the county as may be provided by the order, but any such order may be revoked or varied by a subsequent order. [458]

This section replaces ss. 1 (1), 2 of the Public Health (Regulations as to Food) Act, 1907 (8 Halsbury's Statutes 862, 863), and ss. 6, 8 of the Milk and Dairies (Amendment) Act, 1922 (8 Halsbury's Statutes 881, 882).

**93. Default of Food and Drugs authority.**—(1) If the Minister or the Minister of Agriculture and Fisheries, after communication with a Food and Drugs authority, is of opinion that the authority have failed in relation to any kind of food to execute or enforce any of the provisions of this Act which it is their duty to execute or enforce, and that their failure affects the general interests of consumers, or the general interests of agriculture in the United Kingdom, as the case may be, the Minister

concerned may by order empower an officer of his department to execute and enforce, or procure the execution and enforcement of, those provisions in relation to food of that kind. [459]

This subsection replaces s. 14 (2) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 893).

"The Minister" is the Minister of Health; see s. 100 (1), *post*.

As to Food and Drugs authorities, see s. 64, *ante*.

(2) Expenses incurred under any such order by either of the said Ministers or his officer shall be paid in the first instance out of moneys provided by Parliament, but the amount of those expenses as certified by the Minister concerned shall, on demand, be paid to him by the Food and Drugs authority and shall be recoverable by him from them as a debt due to the Crown, and the authority shall have the like power of raising the money required as they have of raising money for defraying expenses incurred directly by them as a Food and Drugs authority. [460]

This subsection replaces s. 14 (3) of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 893).

See the notes to sub-s. (1), *supra*.

(3) Nothing in this section affects any other power exercisable by the Minister or a county council with respect to defaults of local authorities. [461]

**94. Protection for officers of local authority or county council acting in the execution of their duty.**—(1) An officer of a local authority shall not be personally liable in respect of any act done by him in the execution or purported execution of this Act and within the scope of his employment, if he did that act in the honest belief that his duty under this Act required or entitled him to do it:

Provided that nothing in this subsection shall be construed as relieving a local authority from any liability in respect of acts of their officers. [462]

(2) Where an action has been brought against an officer of a local authority in respect of an act done by him in the execution or purported execution of this Act and the circumstances are such that he is not legally entitled to require the authority to indemnify him, the authority may, nevertheless, indemnify him against the whole or a part of any damages and costs which he may have been ordered to pay or may have incurred, if they are satisfied that he honestly believed that the act complained of was within the scope of his employment and that his duty under this Act required or entitled him to do it. [463]

(3) The provisions of this section shall apply in relation to a county council and the officers thereof as they apply in relation to a local authority and the officers thereof. [464]

See s. 64, *ante*, as to meaning of "local authority."

**95. Provision for compensation in certain cases to officers of local authorities and county councils.**—(1) If, in consequence of a local authority ceasing, as respects the whole or any part of their area, to be a Food and Drugs authority, either upon the commencement of this Act or at any subsequent date, or in consequence of any such vesting of functions as is mentioned in subsection (2) of section seventy-six of this Act or any transfer or relinquishment of functions under any of the provisions of the Public Health Act, 1936, which are incorporated in



this Act, the appointment of any officer of a local authority is determined or his emoluments are diminished, the provisions of subsections (2) to (4) and (6) of section one hundred and fifty of, and the Fourth Schedule to, the Local Government Act, 1933, shall apply in relation to him—

- (a) as if the cesser, vesting, transfer or relinquishment had taken effect by virtue of an order made by the Minister under Part VI of the said Act of 1933 and coming into operation upon the commencement of this Act or, as the case may be, upon the date on which the cesser, vesting, transfer or relinquishment took effect; and
- (b) as if the said order provided that any officer who by virtue or in consequence of the order might suffer any direct pecuniary loss by reason of the determination of his appointment or the diminution of his emoluments, and for whose compensation for that loss no other provision was made by or under any enactment for the time being in force, should be entitled to receive compensation from such authority, or from such authorities and in such proportions, as the Minister might determine. [465]

As to meaning of "local authority" and "Food and Drugs authority," see s. 64, *ante*.

As to the provisions of the Public Health Act, 1936, incorporated in this Act, see s. 96 and notes thereto, *infra*.

For the Local Government Act, 1933, s. 150 (2)—(4), (6), and Sched. IV, see 26 Halsbury's Statutes 388, 389, 504. For Part VI of that Act, see *ibid.* 374.

As to the commencement of this Act, see s. 103 (1), *post*.

The Minister is the Minister of Health; see s. 100 (1), *post*.

(2) The provisions of this section shall apply in relation to a county council and the officers thereof as they apply in relation to a local authority and the officers thereof. [466]

(3) For the purposes of this section, a public analyst shall be deemed to be an officer of the authority by whom he was appointed. [467]

**96. Incorporation of certain provisions of the Public Health Act, 1936.**—(1) The following provisions of the Public Health Act, 1936, shall be deemed to be incorporated in this Act, that is to say :—

- Section 271 (Interpretation of "provide") ;
- Section 272 (Power of councils to combine for purposes of Act) ;
- Section 273 (Provisions as to sub-committees) ;
- Section 277 (Power of councils to require information as to ownership of premises) ;
- Section 283 (Notices to be in writing ; form of notices, &c.) ;
- Section 284 (Authentication of documents) ;
- Section 285 (Service of notices, &c.) ;
- Section 286 (Proof of resolutions, &c.) ;
- Section 289 (Power to require occupier to permit works to be executed by owner) ;
- Section 303 (Mode of reference to arbitration) ;
- Section 304 (Judges and justices not to be disqualified by liability to rates) ;
- Section 306 (Compulsory purchase of land by means of provisional order) ;
- Section 311 (Loans by Public Works Loan Commissioners) ;
- Section 313 (Orders for amendment or adaptation of local Acts) ;

- Section 317 (Amendment of 38 & 39 Vict. c. 55, s. 308);  
 Section 318 (Local inquiries);  
 Section 319 (Provisions as to regulations required to be laid before Parliament);  
 Sections 320 to 325 (Relinquishment and transfer of powers and duties of councils);  
 Section 328 (Powers of Act to be cumulative);  
 Section 345 (Transitional provisions as to offences and notices).  
**[468]**

For the above-mentioned sections of the Public Health Act, 1936, see 29 Halsbury's Statutes 497 *et seq.*

(2) For the purposes of the application of the preceding subsection to London—

- (a) as respects section three hundred and six of the Public Health Act, 1936, the provisions of the Local Government Act, 1933, relating to the compulsory acquisition of land by means of a provisional order shall, for the purposes of this Act, be deemed to extend to London and shall have effect as if any reference therein to a local authority were a reference to a local authority as defined by this Act;
- (b) as respects section three hundred and eighteen of the Public Health Act, 1936, the provisions of section two hundred and ninety-seven of the Public Health (London) Act, 1936, shall apply in relation to any inquiry held by the Minister under this Act in London. **[469]**

For s. 306 of the Public Health Act, 1936, see 29 Halsbury's Statutes 517. For the provisions of the Local Government Act, 1933, relating to the compulsory acquisition of land by means of a provisional order, see s. 160 of that Act, 26 Halsbury's Statutes 393.

For definition of "local authority" in this Act, see s. 64, *ante*.

For s. 318 of the Public Health Act, 1936, see 29 Halsbury's Statutes 523; and for s. 297 of the Public Health (London) Act, 1936, see 30 Halsbury's Statutes 599.

**97. Temporary continuance of licence or registration on death of person licensed or registered.**—Where a person who holds a licence, or is registered in respect of any premises, under this Act or any regulations made thereunder dies, the licence or registration shall, unless previously revoked or cancelled, enure for the benefit of his widow, or any other member of his family, until the expiration of two months from his death, or until the expiration of such longer period as the licensing or registering authority may allow. **[470]**

**98. 6 & 7 Will. 4, c. 37, ss. 5, 14 and 3 Geo. 4, c. cvi, ss. 5, 16 to cease to have effect.**—Sections five and fourteen of the Bread Act, 1836, which relate respectively to the use by bakers of avoirdupois weight and to baking on Sunday, and sections five and sixteen of the local Act chapter cvi of the third year of the reign of King George the Fourth, being the corresponding enactments in force in London, shall cease to have effect. **[471]**

For the Bread Act, 1836, ss. 5, 14, see 8 Halsbury's Statutes 852, 856.

**99. Saving for markets of Woolwich Borough Council.**—No repeal effected by this Act shall affect any rights, duties or privileges vested in, or imposed on, the council of the metropolitan borough of Woolwich in relation to their markets. **[472]**

*Interpretation, repeals, &c.*

**100. Definitions.**—(1) In this Act, unless the context otherwise requires—

- “animal” does not include bird;
- “area” in relation to a county council and to officers of such a council means, as the case may require, either the county or that part of the county for which the council are the Food and Drugs authority and, in relation to a local authority and to officers of such an authority, means their district;
- “article,” in relation to food, does not include a live animal or bird, but save as aforesaid includes in the case of an animal, bird or fish the whole or any part thereof;
- “artificial cream” means an article of food which, though not cream, resembles cream and contains no ingredient which is not derived from milk except water or any substance which may lawfully be contained in an article sold as cream, being some substance not injurious to health which in the case of cream may be required for its production or preparation as an article of commerce in a state fit for carriage or consumption and which has not been added fraudulently to increase bulk, weight or measure or conceal inferior quality;

This definition replaces and extends the definition of “artificial cream” in s. 6 of the Artificial Cream Act, 1929, 8 Halsbury's Statutes 910.

- “authorised market officer” means an officer of a market authority specially authorised by them to collect tolls, stallages and other charges in their market;
- “authorised officer” means, as respects any council, an officer of the council authorised by them in writing, either generally or specially, to act in matters of any specified kind or in any specified matter and, for the purposes of the provisions of this Act relating to the taking of samples, includes a police constable so authorised with the approval of the police authority concerned;

Provided that—

- (a) the medical officer of health and sanitary inspector of a council shall by virtue of their appointments be deemed to be authorised officers for all the purposes of this Act;
  - (b) any member of the Royal College of Veterinary Surgeons employed by the council for the purpose of the inspection of food shall be deemed to be an authorised officer for the purpose of the examination and seizure of meat under the provisions of this Act relating to unsound food;
  - (c) no officer of a council other than the medical officer of health, a sanitary inspector or a member of the Royal College of Veterinary Surgeons employed as aforesaid shall be authorised to act in relation to the examination and seizure of meat;
- “Bread and Flour Regulations” has the meaning assigned to it by section thirty of this Act;

“butter” means the substance usually known as butter, made exclusively from milk with or without salt or other preservative, and with or without the addition of colouring matter;

This definition replaces the definition of “butter” in s. 34 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 905).

“cheese” means the substance usually known as cheese, containing no fat other than fat derived from milk;

This definition substantially reproduces the definition of “cheese” in s. 34 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 905).

“container” includes a package or receptacle of any kind, whether open or closed;

“county” means an administrative county;

“county district” means a non-county borough, urban district or rural district;

“cream” means that part of milk rich in fat which has been separated by skimming or otherwise;

This definition substantially reproduces the definition of “cream” in s. 6 of the Artificial Cream Act, 1929 (8 Halsbury's Statutes 910).

“dairy” includes any farm, cowshed, milk store, milk shop, or other premises from which milk is supplied on or for sale, or in which milk is kept or used for purposes of sale or of manufacture into butter, cheese, dried milk or condensed milk for sale, or in which vessels used for the sale of milk are kept, but does not include a shop from which milk is supplied only in the properly closed and unopened vessels in which it is delivered to the shop, or a shop or other place in which milk is sold for consumption on the premises only;

This definition substantially reproduces the definition of “dairy” in s. 19 (1) of the Milk and Dairies (Consolidation) Act, 1915 (8 Halsbury's Statutes 874).

“dairyman” includes an occupier of a dairy, a cowkeeper, and a purveyor of milk;

This definition substantially reproduces the definition of “dairyman” in s. 19 (1) of the Milk and Dairies (Consolidation) Act, 1915 (8 Halsbury's Statutes 874).

“district,” in relation to the local authority of a borough, or any local authority in London, and in relation to the officers of such an authority, means the borough or other area for which the authority acts;

“drug” includes medicine for internal or external use;

This definition re-enacts the definition of “drug” in s. 34 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 905).

“food” means any article used as food or drink for human consumption, other than drugs or water, and includes—

(a) any substance which is intended for use in the composition or preparation of food;

(b) any flavouring matter or condiment; and

(c) any colouring matter intended for use in food:

provided that, notwithstanding anything in this definition, the addition of any colouring or flavouring matter or condiment to

an article used as food or drink shall be deemed to be the addition of a substance to food ;

This definition replaces the definition of " food " in s. 34 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 905). The first part of the definition is substantially the same, but the reference to colouring matter is new, as is also the proviso.

In *Bennett v. Tyler* (1900), 64 J. P. 119 ; 25 Digest 70, 3, chewing-gum was held not to be a food ; and in *Fovle v. Fovle* (1896), 60 J. P. 758 ; 25 Digest 70, 7, bees-wax was held not to be a drug ; but *cf. Houghton v. Taplin* (1897), 13 T. L. R. 386.

" Food and Drugs authority " has the meaning assigned to it by section sixty-four of this Act ;

" Food Regulations " has the meaning assigned to it by section eight of this Act ;

" functions " includes powers and duties ;

" ice-cream " includes any similar commodity ;

" importer," in relation to an imported article, includes any person who, whether as owner, consignor, consignee, agent or broker, is in possession of, or in any way entitled to the custody or control of, the article ;

This definition substantially re-enacts the definition of " importer " in s. 34 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 905).

" knacker's yard " means any premises used in connection with the business of slaughtering, flaying or cutting up animals, the flesh of which is not intended for human consumption ;

" local authority " has the meaning assigned to it by section sixty-four of this Act ;

" London " means the administrative county of London ;

" margarine " means any food, whether mixed with butter or not, which resembles butter and is not milk-blended butter ;

This definition substantially re-enacts the definition of " margarine " in s. 34 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 905).

See *Wilkinson v. Alton* (1908), 72 J. P. 252 ; 25 Digest 122, 442.

" margarine-cheese " means any substance prepared in imitation of cheese and containing fat not derived from milk ;

This definition re-enacts the definition of " margarine-cheese " in s. 34 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 905), excluding the words " whether compound or otherwise " after the word " substance."

" market authority " has the meaning assigned to it by section forty-four of this Act ;

" Milk and Dairies Regulations " has the meaning assigned to it by section twenty of this Act ;

" milk-blended butter " means any mixture produced by mixing or blending butter with milk ;

This definition re-enacts the definition of " milk-blended butter " in s. 34 of the Food and Drugs (Adulteration) Act, 1928 (8 Halsbury's Statutes 905), omitting the words " or cream other than condensed milk or cream " after the word " milk " ; see sub-s. (2) (a) of this section, *post*.

" Minister " means Minister of Health ;

" officer " includes servant ;

" premises " includes messuages, buildings, land, easements and hereditaments of any tenure ;

" prepare," in relation to food, includes manufacture and " preparation " shall be construed accordingly ;

" prescribed " means prescribed by the Minister ;



"public analyst" has the meaning assigned to it by section sixty-six of this Act;

"purveyor," in relation to milk, includes any person who sells milk, whether wholesale or by retail;

This definition substantially re-enacts the definition of "purveyor of milk" in s. 19 (1) of the Milk and Dairies (Consolidation) Act, 1915 (8 Halsbury's Statutes 874). An odd transaction does not make a "purveyor" of milk (*Emerton v. Hall* (1910), 74 J. P. 301; 25 Digest 126, 476).

"rural authority" means the council of a rural district;

"sampling officer" has the meaning assigned to it by section sixty-eight of this Act;

"sanitary convenience" means a closet, privy or urinal;

"separated," in relation to milk, includes skimmed;

"shop" has the same meaning as in the Shops Act, 1934;

For the meaning of "shop" in the Shops Act, 1934, see s. 15 (1) of that Act (27 Halsbury's Statutes 238).

"slaughter-house" means any premises used in connection with the business of slaughtering animals, the flesh of which is intended for sale for human consumption;

"substance" includes a liquid;

"transit" includes all stages of transit from the dairy, place of manufacture or other source of origin, to the consumer;

"urban authority" means the council of a borough or urban district;

"vessel" includes a receptacle of any kind, whether open or closed. [473]

(2) In this Act, unless the context otherwise requires—

(a) any reference to milk shall be construed as including a reference to cream and to separated milk, but not as including a reference to dried milk or to condensed milk; and

(b) any reference to food of any kind sold, or offered, exposed, intended or in preparation, for sale for human consumption shall be construed as including a reference to that food sold, or offered, exposed, intended or in preparation, for sale for the manufacture of products for human consumption.

[474]

**101. Repeals and construction of references.**—(1) The enactments mentioned in the First Part of the Fourth Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Part, and the said repeal shall as respects the Acts mentioned in the Second Part of the said Schedule, to the extent specified in the third column of that Part, extend to Scotland and shall as respects the Act mentioned in the Third Part of the said Schedule, to the extent specified in the third column of that Part, extend to Northern Ireland and the Isle of Man.

(2) The provisions of the Public Health Act, 1875, specified in paragraph (2) of Part I of the Third Schedule to the Public Health Act, 1936, as repealed by that Act except so far as they might be material for the purposes of any unrepealed enactment in the said Act of 1875, or any Act directed to be construed therewith, shall be deemed to be repealed except so far as they may be material for the purposes of any

enactment in any such Act which remains unrepealed after the commencement of this Act.

For the Public Health Act, 1936, Sched. III, Part I, para. (2), see 29 Halsbury's Statutes 545.

(8) In so far as any provision in an order or regulation made under any enactment repealed by this Act could have been made under a corresponding enactment in this Act, or, in the case of a provision in a Milk and Dairies Order, under an enactment in this Act relating to Milk and Dairies Regulations, it shall not be invalidated by this repeal, but shall have effect as if it had been made under that corresponding, or other, enactment in this Act, and may be amended, varied, revoked or enforced accordingly, and any person who is guilty of a contravention of, or non-compliance with, any such provision shall be guilty of an offence under this Act.

(4) Subject to any express provision in this Act to the contrary, in so far as any appointment, agreement or byelaw made, or any resolution passed, or any notice, direction, consent, approval, or certificate given under any enactment repealed by this Act, or any licence granted or deemed to have been granted, registration effected, or deemed to have been effected, proceeding instituted or other thing done under any such enactment could have been made, passed, given, granted, effected, instituted or done under a corresponding provision of this Act, it shall not be invalidated by this repeal, but shall have effect as if it had been made, passed, given, granted, effected, instituted or done under that corresponding provision and may be amended, varied, revoked or enforced accordingly, and, in the case of any legal proceeding, may be continued and appealed against as if this Act had not been passed.

(5) Any document referring to an Act or enactment repealed by this Act shall be construed as referring to this Act or, as the case may be, to the corresponding enactment, if any, in this Act.

(6) The mention of particular matters in this section shall not be held to prejudice or affect the general application of section thirty-eight of the Interpretation Act, 1889, with regard to the effect of repeals. [475]

For the Interpretation Act, 1889, s. 38, see 18 Halsbury's Statutes 1005.

## 102. Application to Scotland and Northern Ireland.—[Sub-s. (1). *Application to Scotland.*]

(2) Part IV of this Act, section one hundred and one so far as relating to the enactments mentioned in the Third Part of the Fourth Schedule and subsection (1) of section one hundred and three shall apply to Northern Ireland, subject to the following modifications:—

(a) for any reference to the Minister of Agriculture and Fisheries there shall be substituted a reference to the Ministry of Agriculture for Northern Ireland;

(b) for paragraph (e) of section forty of this Act the following paragraph shall be substituted—

“(e) any such butter, margarine or milk-blended butter as is referred to in subsection (1) of section thirty-two of this Act”;

but, save as aforesaid, this Act shall not apply to Northern Ireland. [476]

103. Short title, date of commencement and extent.—(1) This Act may be cited as the Food and Drugs Act, 1938, and shall come into operation on the first day of October nineteen hundred and thirty-nine.

(2) Part V of this Act shall not extend to London.

(3) This Act shall not, save as mentioned in the last preceding section, extend to Scotland or Northern Ireland. [477]

## SCHEDULES.

### FIRST SCHEDULE.

Sects. 25 (4),  
37 (5).

#### PART I.

#### DISEASES OF COWS TO WHICH SECTION TWENTY-FIVE APPLIES.

Acute mastitis.  
Actinomycosis of the udder.  
Suppuration of the udder.  
Any infection of the udder or teats which is likely to convey disease.  
Any comatose condition.  
Any septic condition of the uterus.  
Anthrax.  
Foot and mouth disease.

#### PART II.

#### MILK-BORNE DISEASES.

Enteric fever (including typhoid and paratyphoid fevers).  
Dysentery.  
Diphtheria.  
Scarlet fever.  
Acute inflammation of the throat.  
Gastro-enteritis.  
Undulant fever. [478]

### SECOND SCHEDULE.

Sect. 47 (2).

#### CHARGES FOR WEIGHING ANIMALS.

For every head of cattle	-	-	-	-	-	-	sixpence.
For every five (or a less number) of sheep or swine	-	-	-	-	-	-	threepence.

[479]

### THIRD SCHEDULE.

Sects. 71 (1),  
84 (2).

#### SPECIAL PROVISIONS AS TO THE SAMPLING OF MILK.

(1) Where a sample of milk is procured from a purveyor of milk, he shall, if required to do so by the person by whom or on whose behalf the sample was procured, state the name and address of the seller or consignor from whom he received the milk.

(2) Within sixty hours after the sample was procured from the purveyor, he may serve on the authority by whose officer it was procured, or, if it was not procured by an officer of any authority, on the Food and Drugs authority within whose area it was procured, a notice stating the name and address of the seller or consignor from whom he received the milk and the time and

place of delivery to himself of milk from a corresponding milking, and requesting the authority to take immediate steps to procure, as soon as practicable, a sample of milk from a corresponding milking in the course of transit or delivery to himself from the seller or consignor :

Provided that—

- (a) if such a sample has been so procured since the sample in question was procured, or had been so procured within twenty-four hours prior to that sample being procured, it shall not be necessary for the authority to procure another sample in accordance with the notice ; and
  - (b) the purveyor shall have no right to require that such a sample shall be procured if the milk from which the sample procured from him was taken was a mixture of milk obtained by him from more than one person.
- (3) If a purveyor has served on the authority such a notice as aforesaid, and the authority have, in a case not falling within proviso (a) to the preceding paragraph, omitted to procure a sample of milk from the seller or consignor in accordance with the foregoing provisions, no proceedings under this Act shall be taken against the purveyor in respect of the sample procured from him.
- (4) Any sample so procured in the course of transit or delivery shall be submitted for analysis to the analyst to whom the sample procured from the purveyor is or was submitted.
- (5) If proceedings are taken against the purveyor, a copy of the certificate of the result of the analysis of every sample so procured in the course of transit or delivery shall be furnished to him, and every such certificate and copy shall, subject to the provisions of section eighty-one of this Act, be admissible as evidence on any question whether the milk sold by the purveyor was sold in the same state as it was in when he purchased it.
- (6) The authority by whose officer, or within whose area, the first-mentioned sample was procured may, instead of, or in addition to, taking proceedings against the purveyor, take proceedings against the seller or consignor.
- (7) If a sample of milk of cows in any dairy is procured in course of transit or delivery from that dairy, the dairyman may, within sixty hours after the sample was procured, serve on the authority by whose officer the sample was procured a notice requesting them to take immediate steps to procure as soon as practicable a sample of milk from a corresponding milking of the cows and, thereupon, paragraphs (2) to (5) of this Schedule shall, so far as applicable, apply with any necessary modifications :

Provided that the person procuring the sample shall be empowered to take any such steps at the dairy as may be necessary to satisfy him that the sample is a fair sample of the milk of the cows when properly and fully milked. [480]

Sect. 101.

#### FOURTH SCHEDULE.

##### PART I.

##### ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
32 Henry 8. c. 40 1 Mary : Sess. 2. c. 9.	Concerning Physicians. An Acte touching thin- corporations of the Phisitions in London.	Section two. Section three.

Session and Chapter.	Short Title.	Extent of Repeal.
6 Anne, c. 68 - -	An Act for repealing the Act of the First year of King James the First intituled an Act for the well garbling of Spices.	The whole Act.
5 Geo. 1. c. 11 -	The Adulteration of Coffee Act, 1718.	The whole Act.
11 Geo. 1. c. 30 -	The Adulteration of Tea and Coffee Act, 1724.	Section nine.
7 Geo. 2. c. 19 -	The Adulteration of Hops Act, 1733.	The whole Act.
28 Geo. 3. c. 71 -	The Knackers Act, 1786	The whole Act.
55 Geo. 3. c. 194 -	The Apothecaries Act, 1815.	Sections three and four, and in section eight the words from "save and except" (where those words first occur) to "medicines, and also".
3 Geo. 4. c. cvi -	An Act to repeal the Acts in force relating to bread to be sold in the City of London and the Liberties thereof, and for other purposes in the said Act mentioned.	The whole Act.
6 & 7 Will. 4. c. 37	The Bread Act, 1836	The whole Act.
7 & 8 Vict. c. 87	The Knackers Act, 1844	The whole Act.
38 & 39 Vict. c. 55	The Public Health Act, 1875.	Sections one hundred and sixteen to one hundred and nineteen, and one hundred and sixty-six to one hundred and seventy; the Third Schedule and, in the Fourth Schedule, Forms L, M and O.
41 & 42 Vict. c. 49	The Weights and Measures Act, 1878.	Part II of the Sixth Schedule, so far as respects any local authority outside London who are a market authority for the purposes of this Act.
47 & 48 Vict. c. 12	The Public Health (Confirmation of Byelaws) Act, 1884.	Section three, so far as it relates to byelaws made under section one hundred and twenty-eight of the Towns Improvement Clauses Act, 1847, or section forty-two of the Markets and Fairs Clauses Act, 1847, by virtue of their incorporation with the Public Health Act, 1848, the Local Government Act, 1858, or the Public Health Act, 1875.
50 & 51 Vict. c. 27	The Markets and Fairs (Weighing of Cattle) Act, 1887.	Sections four to nine, so far as respects any local authority outside London who are a market authority for the purposes of this Act.
52 & 53 Vict. c. 11	The Sale of Horseflesh, &c., Regulation Act, 1889.	The whole Act.
53 & 54 Vict. c. 34	The Infectious Disease (Prevention) Act, 1890.	The whole Act.
53 & 54 Vict. c. 59	The Public Health Acts Amendment Act, 1890.	Paragraph (2) of section three and sections twenty-eight to thirty-one, and fifty.
54 & 55 Vict. c. 70	The Markets and Fairs (Weighing of Cattle) Act, 1891.	Sections one and two, so far as respects any local authority outside London who are a market authority for the purposes of this Act.
56 & 57 Vict. c. 73	The Local Government Act, 1894.	In section sixteen, subsection (1) so far as regards functions of a rural district council which are functions under this Act; in section twenty-five, subsections (1) and (7) so far as regards functions of a council which are functions under this Act; subsection (2) of section twenty-seven and section sixty-three so far as regards functions of a council which are functions under this Act.



Session and Chapter.	Short Title.	Extent of Repeal.
7 Edw. 7. c. 32 -	The Public Health (Regulations as to Food) Act, 1907.	The whole Act.
7 Edw. 7. c. 53 -	The Public Health Acts Amendment Act, 1907.	In section one, the reference to Part IV—Infectious diseases; in section thirteen, the definitions of "dairy", "dairyman" and "infectious disease"; and sections fifty-three and fifty-four.
8 Edw. 7. c. 6 -	The Public Health Act, 1908.	The whole Act.
5 & 6 Geo. 5. c. 66	The Milk and Dairies (Consolidation) Act, 1915.	The whole Act.
12 & 13 Geo. 5. c. 28.	The Bread Acts Amendment Act, 1922.	The whole Act.
12 & 13 Geo. 5. c. 54.	The Milk and Dairies (Amendment) Act, 1922.	The whole Act.
15 & 16 Geo. 5. c. 71.	The Public Health Act, 1925.	Sections seventy-one and seventy-two.
16 & 17 Geo. 5. c. 21.	The Markets and Fairs (Weighing of Cattle) Act, 1926.	The following provisions so far as respects any local authority outside London who are a market authority for the purposes of this Act, that is to say—in section two the words from the beginning to "facilities for weighing cattle and" and the word "respectively"; section three, and the Schedule.
18 & 19 Geo. 5. c. 31.	The Food and Drugs (Adulteration) Act, 1928.	The whole Act.
19 & 20 Geo. 5. c. 17.	The Local Government Act, 1929.	In section fifty-seven, subsections (2) and (3) so far as regards functions relating to public health which are functions under this Act.
19 & 20 Geo. 5. c. 32.	The Artificial Cream Act, 1929.	The whole Act.
22 & 23 Geo. 5. c. 28.	The Public Health (Cleansing of Shell-fish) Act, 1932.	The whole Act.
23 & 24 Geo. 5. c. 51.	The Local Government Act, 1933.	In section one hundred and fifty-nine, subsection (2) so far as it relates to purposes which are purposes of this Act.
24 & 25 Geo. 5. c. 51.	The Milk Act, 1934.	Section ten.
26 Geo. 5. & 1 Edw. 8. c. 50.	The Public Health (London) Act, 1936.	Subsections (1) to (7) and (9) to (11) of section one hundred and eighty; sections one hundred and eighty-one to one hundred and eighty-three, one hundred and eighty-five to one hundred and ninety-one, two hundred and six and two hundred and seven; in section two hundred and seventy-four, the proviso to subsection (1); in section two hundred and seventy-six, proviso (b) to subsection (1) and subsection (2); and in section three hundred and one the words in subsection (2) from "relating to the registration" to "preserved food, or."
1 Edw. 8. & 1 Geo. 6. c. 67.	The Factories Act, 1937.	Subsection (1) of section one hundred and fifty-seven and Part I of the Third Schedule.

[PART II.—*Repeals extending to Scotland.*]

## PART III.

## REPEALS EXTENDING TO NORTHERN IRELAND AND THE ISLE OF MAN.

Session and Chapter.	Short Title.	Extent of Repeal.
18 & 19 Geo. 5. c. 31.	The Food and Drugs (Adulteration) Act, 1928.	Sections twelve and twenty; the proviso to subsection (3) of section twenty-seven; subsections (5) and (6) of section twenty-eight and section thirty-six.

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## ORDERS, CIRCULARS AND MEMORANDA

## SALE OF MILK UNDER SPECIAL DESIGNATIONS

*Memorandum 197/Foods*

*This Memorandum sets out in general terms the effect of the Milk (Special Designations) Order, 1936, which operates from the 1st June, 1936. In any case of doubt reference should be made to the terms of the Order, copies of which may be purchased from H.M. Stationery Office at the addresses shown at the end of the Memorandum.*

## PART I.—GENERAL

1. The special grades of milk to which this memorandum relates may be shortly described as follows :—

**Tuberculin Tested milk** is milk from cows which have passed a veterinary examination and a tuberculin test; it is bottled on the farm or elsewhere; and it may be raw, or pasteurised. If it is bottled on the farm, it may be described on the bottle caps or cartons as *Tuberculin Tested Milk (Certified)*. If it is pasteurised it is described as *Tuberculin Tested Milk (Pasteurised)*. It must satisfy certain bacteriological tests.

**Accredited milk** is raw milk from cows which have passed a veterinary examination; it is bottled on the farm or elsewhere. It must satisfy the same bacteriological tests as raw Tuberculin Tested milk.

**Pasteurised milk** is milk which has been retained at a temperature of 145° to 150° F. for at least thirty minutes; and does not contain more than 100,000 bacteria per millilitre.

2. It is unlawful for any person to use any of these designations unless he holds a licence from the appropriate Licensing Authority authorising him to do so.

It is also unlawful to use any other designation for milk if it is such as might falsely suggest :—

(a) that the cows from which the milk is derived are free from tuberculosis or other disease ; or

(b) that the milk is tested, graded or approved by any competent authority.

3. The Licensing Authorities and the maximum annual fees payable for the various classes of licences are set out in the table below. Licensing Authorities may if they see fit reduce these fees or charge no fee. Licences expire on the 31st December.

Designation.	Establishment.	Licensing Authority.	Maximum Annual Licence Fee.
Tuberculin Tested or Accredited	Farm at which milk is produced but not bottled.	County or County Borough Council.*	£ s. d. 1 1 0
	Farm at which milk is produced and bottled.	"	2 2 0
	Bottling establishment not on the farm.	Sanitary Authority.†	2 2 0
	Other establishment (shop, etc., at which milk is not produced or bottled).	"	5 0
Pasteurised	Pasteurising Establishment.‡	Sanitary Authority.†	1 1 0
	Establishment not covered by the licence for a pasteurising establishment.‡	"	5 0

*Note.*—Where a dealer delivers milk direct from the establishment specified in his licence to retail purchasers outside the area of the Authority granting the licence, it is necessary for him to obtain a Supplementary Licence (for which the maximum annual fee is 2s.) from the Sanitary Authority of the district in which the milk is so delivered.

4. The general rule is that a licence applies to one grade of milk and one establishment, so that where a person deals in more than one grade or sells from more than one establishment separate licences are required and separate fees are payable. This rule is subject to the following exceptions, viz. :—

(a) A licence authorising a person to use the special designation "Tuberculin Tested" entitles him to use the special designation "Accredited" in relation to the milk to which that licence applies.

(b) A person holding a licence in respect of a Pasteurising establishment may sell the milk as "Pasteurised" from any premises in the same district without any further licence.

\* Except in London where the Licensing Authority is not the County Council but the Common Council of the City of London and the Metropolitan Borough Councils.

† I.e. the Council of a Borough (including a County Borough and a Metropolitan Borough) and the Council of an Urban or Rural District.

‡ See paragraph 4 (b) below.

*Note.*—Tuberculin Tested Milk (Pasteurised) is not a designation in respect of which a licence is granted and a person selling milk under this description must obtain separate licences in respect of the use of the two designations "Tuberculin Tested" and "Pasteurised"

5. Every licensee must keep accurate records in such a way that they can conveniently be checked. The records must show the quantities of milk produced, purchased and sold, as the case may be, and the names and addresses of the persons from whom it is purchased and of the persons to whom it is sold otherwise than by retail.

6. Adequate measures must be taken to the satisfaction of the Licensing Authority to ensure that the milk to which the licence applies is kept apart from all other milk at all times except when it is in sealed containers. In particular, any vessel or apparatus which has at any time been used for any other milk must be thoroughly cleansed and sterilised on each occasion before it is used for the milk to which the licence applies, and no room or compartment of a dairy may be used at the same time for the milk to which the licence applies and any other milk unless either the former or the latter is in sealed containers.

7. Before a licence is granted the applicant must satisfy the Licensing Authority that the requirements of all Acts and Orders relating to Milk and Dairies and the prescribed conditions for a licence will be regularly complied with. For this purpose the Licensing Authority may direct an inspection of the farm or other establishment in respect of which the licence is desired and may require the applicant to submit reports on the bacteriological examination of samples of milk taken under specified conditions. Every facility must be given at all times to any person authorised by the Licensing Authority to inspect the premises, processes of production, equipment, methods and records and to take samples of the milk free of charge.

8. Application for a licence must be made in writing. Forms are not prescribed, but the forms contained in Appendix II to this memorandum are suggested as suitable for ordinary cases.

9. Enquiries with regard to the conditions governing the granting of licences should be addressed to the appropriate Licensing Authority. A producer who requires technical advice as to the steps to be taken to produce milk complying with the prescribed conditions is recommended to consult the Agricultural Organiser for the area in which his premises are situated.

## PART II.—TUBERCULIN TESTED MILK

The special \* conditions under which licences are granted for the sale of Tuberculin Tested Milk are :—

### 1.—(a) *Veterinary Examination (clinical).*

Every animal in the herd must pass a veterinary examination as described in Appendix I to this memorandum within one month before the date of application for the licence and thereafter at intervals of not more than six months.

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\* See also the general conditions in Part I of this memorandum.

(b) *Tuberculin Test.*

(A) if the herd is on the Register of Attested Herds kept by the Minister of Agriculture and Fisheries under the provisions of Section 9 of the Milk Act, 1934, the relevant conditions prescribed by the Minister of Agriculture and Fisheries must be complied with.\*

(B)—(i) if the herd is not on the Register of Attested Herds, every † animal in the herd must pass a tuberculin test as described in Appendix I to this memorandum within one month before the date of application for the licence and thereafter at intervals of not less than two and not more than six months. The Licensing Authority may also at their own cost require animals to be submitted to additional tuberculin tests.

An animal born and bred in the herd must be submitted to the tuberculin test before it reaches the age of twelve months.

(ii) The following requirements apply to the addition of animals to licensed herds (not being Attested Herds) :—

if the animal is taken directly from an Attested Herd or a herd licensed for Tuberculin Tested milk, it must have passed the prescribed tuberculin test on the occasion of the last test in that herd ;

if the animal is not taken directly from such a herd, it must pass a tuberculin test within fourteen days before being added to the herd, and be submitted to a further tuberculin test two months after the date of addition and during those two months must be segregated from the rest of the herd.

(c) Tuberculin must not be used except on the occasion of the prescribed tests and no animal may be inoculated or vaccinated against tuberculosis or with a live vaccine against contagious abortion.

(d) The veterinary examination and (except in the case of a herd on the Register of Attested Herds) the tuberculin test must be carried out by a veterinary surgeon nominated or approved by the Licensing Authority.

(e) Any animal which reacts to the tuberculin test must immediately be removed from the herd. Any animal found to be showing evidence of any disease which may affect the milk injuriously must immediately be segregated from the rest of the herd, or removed from the herd, as the case may require, and must not be reintroduced until certified by a veterinary surgeon as having recovered. The milk of the animals so segregated or removed must not be sold as milk from the herd.

(f) The herd must be kept completely isolated from all other cattle.

(g) A herd book or register of all the animals in the herd (showing additions and removals) must be kept and all the animals must be suitably marked for purposes of identification (e.g. with numbers tattooed on the ear or branded on the horn).

(h) Reports on all veterinary examinations must be sent to the Licensing Authority within seven days of the examinations. Reports of tuberculin tests must be sent to the Licensing Authority within seven days after the completion of the test, or, in the case of an animal added to the herd, within seven days of the addition.

\* For information with regard to the Attested Herds scheme application should be made to the Ministry of Agriculture and Fisheries, Whitehall Place, London, S.W.1.

† Every animal must be distinguished in the certificate of the tuberculin test by its identification mark (see paragraph 1 (g) of Part II of this memorandum).



(i) A record must be kept for inspection, if required, by the Licensing Authority, of all animals segregated from the rest of the herd or removed from the herd in pursuance of paragraph (e) above, showing the reasons for the segregation or removal and, in the case of removal, the manner in which the animal has been disposed of.

2.—(a) Except as stated in paragraph (d) below the milk must be delivered to the consumer in bottles filled at the farm or at some other licensed bottling establishment.

(b) If the milk is not bottled on the farm it must be sent to the bottling establishment in unventilated sealed churns, each churn being suitably labelled with the following particulars :—

(i) The address of the farm.

(ii) The day of milking and the word “ morning ” or “ evening ” according to the time of milking (e.g. Monday morning, Monday evening).

(iii) The words “ Tuberculin Tested Milk ”.

(c) Every bottle in which the milk is delivered to the consumer (whether filled at the farm or elsewhere) must be tightly closed and securely fastened with a cap overlapping the lip of the bottle, or in some other manner approved by the Licensing Authority for the establishment where the milk is bottled.

The cap must bear :—

(i) The address of the bottling establishment.

(ii) The words “ Tuberculin Tested Milk ”.

The cap may also bear :—

(i) The day of production, with or without the word “ morning ” or “ evening ” according to the time of milking.

(ii) The name of the dealer by whom the milk was bottled.

(iii) The words “ Produced from cows which have passed the tuberculin test ”.

(iv) The word “ (Certified) ”, if the milk has been bottled at the place of production.

No other words may be placed on the cap without the consent of the Licensing Authority for the establishment where the milk is bottled.

“ Bottle ” for the purposes of this paragraph includes any container (e.g. a “ carton ”) of a capacity not exceeding a quart, which is of a type approved by the Licensing Authority for the establishment where the milk is bottled. If there is no cap on which the wording can suitably be placed, it must be placed within a surrounding line in a prominent position elsewhere upon the container.

(d) The milk instead of being bottled may be sent in containers of at least two gallons capacity, each container being closed with a tightly fitting cover and suitably sealed and labelled (see paragraph 2 (b) above).

3.—(a) The milk must satisfy the prescribed methylene blue reduction test,\* and must contain no coliform bacillus in one-hundredth of a millilitre.

(b) In order to ensure compliance with these requirements, the steam sterilisation of all utensils and containers is considered necessary.

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\* The methylene blue reduction test operates from 1st January, 1937 ; until that date a sample taken at any time before delivery to the consumer must not contain more than 200,000 bacteria per millilitre.

4.—(a) The milk must not be treated by any heating process except when pasteurised in a licensed pasteurising establishment for sale as “Tuberculin Tested Milk (Pasteurised)”. In that case the milk must be pasteurised in accordance with the conditions specified in Part IV of this memorandum and must be described as “Tuberculin Tested Milk (Pasteurised)”. In the labelling or marking of the receptacles containing the milk the word “(Pasteurised)” must be printed in block letters not smaller than the letters used for the words “Tuberculin Tested Milk”.

(b) Milk sold as “Tuberculin Tested Milk (Pasteurised)” must not contain more than 30,000 bacteria per millilitre.

### PART III.—ACCREDITED MILK

The special \* conditions under which licences are granted for the sale of Accredited Milk are :—

1. The milk must be the milk of healthy animals. For this purpose :

(a) Every milch cow in the herd must pass a veterinary examination as described in Appendix I to this memorandum within a month before the date of the application for the licence, and thereafter at intervals of three months.

(b) The examination must be carried out by a veterinary surgeon nominated or approved by the Licensing Authority.

(c) Any cow found to be showing evidence of any disease which is likely to affect the milk injuriously must immediately be segregated from the rest of the herd or removed from the herd, as the case may require, and must not be reintroduced until certified by a veterinary surgeon as having recovered. The milk of any such cow must not be sold as “Accredited”.

(d) The herd must not at any time include an animal which to the knowledge of the producer was tested with tuberculin before admission to the herd and reacted to the test.

(e) The cows in milk belonging to the herd must be kept separate from all other cows in milk.

(f) A herd book or register of all the milch cows in the herd (showing additions and removals) must be kept and all those cows must be suitably marked for purposes of identification (e.g. with numbers tattooed on the ear or branded on the horn).

(g) The reports on the veterinary examinations must be sent to the Licensing Authority within seven days of the examinations.

(h) A record must be kept for inspection, if required, by the Licensing Authority, of all cows segregated from the rest of the herd or removed from the herd in pursuance of paragraph (c) above, showing the reasons for the segregation or removal and, in the case of removal, the manner in which the cow has been disposed of.

2.—(a) Except as stated in paragraph (d) below the milk must be delivered to the consumer in bottles filled at the farm or at some other licensed bottling establishment.

(b) If the milk is not bottled on the farm it must be sent to the

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\* See also the general conditions in Part I of this memorandum.

bottling establishment in unventilated sealed churns, each churn being suitably labelled with the following particulars :—

- (i) The address of the farm.
  - (ii) The day of milking and the word “ morning ” or “ evening ” according to the time of milking (e.g. Monday morning, Monday evening).
  - (iii) The words “ Accredited Milk ”.
- (c) Every bottle in which the milk is delivered to the consumer (whether filled at the farm or elsewhere) must be tightly closed and securely fastened with a cap overlapping the lip of the bottle, or in some other manner approved by the Licensing Authority for the establishment where the milk is bottled.

The cap must bear :—

- (i) The address of the bottling establishment.
- (ii) The words “ Accredited Milk ”.

The cap may also bear :—

- (i) The day of production, with or without the word “ morning ” or “ evening ” according to the time of milking.
- (ii) The name of the dealer by whom the milk was bottled.
- (iii) The words “ Farm bottled ”, if the milk has been bottled at the place of production.

No other words may be placed on the cap without the consent of the Licensing Authority for the establishment where the milk is bottled.

“ Bottle ” for the purposes of this paragraph includes any container (e.g. a “ carton ”) of a capacity not exceeding a quart, which is of a type approved by the Licensing Authority for the establishment where the milk is bottled. If there is no cap on which the wording can suitably be placed, it must be placed within a surrounding line in a prominent position elsewhere upon the container.

(d) The milk instead of being bottled may be sent in containers of at least two gallons capacity, each container being closed with a tightly fitting cover and suitably sealed and labelled (see paragraph 2 (b) above).

3.—(a) The milk must satisfy the prescribed methylene blue reduction test,\* and must contain no coliform bacillus in one-hundredth of a millilitre. (b) In order to ensure compliance with these requirements the steam sterilisation of all utensils and containers is considered necessary.

4. The milk must not be treated by heat.

#### PART IV.—PASTEURISED MILK

The special † conditions under which licences are granted for the sale of Pasteurised Milk are :—

1. The milk must be retained at a temperature of not less than 145° and not more than 150° F. for at least 30 minutes and then be immediately cooled to a temperature of not more than 55° F.

\* The methylene blue reduction test operates from 1st January, 1937 ; until that date a sample taken at any time before delivery to the consumer must not contain more than 200,000 bacteria per millilitre.

† See also the general conditions in Part I of this memorandum.

2. It must not be otherwise treated by heat and must not be pasteurised more than once. After the milk has left the pasteurising apparatus it must not be put in any apparatus or storage vessels which are at any time used for non-pasteurised milk.

3. There must be indicating and recording thermometers in suitable parts of the apparatus during the whole of the pasteurisation process and the type of apparatus, the thermometers used, and the methods employed \* must be satisfactory to the Licensing Authority.

4. Temperature records must be made and must be kept for inspection for not less than a month.

5. The milk at any time before delivery to the consumer must not contain more than 100,000 bacteria per millilitre.

6. Every receptacle in which the milk is transported or is exposed or offered for sale must be suitably labelled " Pasteurised Milk ".

## APPENDIX I

### VETERINARY CLINICAL EXAMINATION AND TUBERCULIN TEST

#### *Veterinary Clinical Examination for Tuberculin Tested and Accredited Milks*

The animals must be examined for the following pathological conditions, viz. :—

Tuberculosis of the udder, any induration of the udder likely to affect the milk, enlargement of supra-mammary lymphatic glands, tuberculosis in any form which can be recognised clinically, chronic cough with definite clinical symptoms of tuberculosis, anthrax, foot and mouth disease, mastitis, abscess of the udder, retained placenta, actinomycosis of the udder, suppuration of the udder, any comatose condition, any acute septicæmic condition, any septic condition of the uterus, and any infection of the udder or teats, which is likely to convey disease.

In the case of Tuberculin Tested Milk every animal in the herd, including any bulls which are kept in contact with the cows while they are in milk, must be examined. In the case of Accredited Milk it is only necessary to examine the milch cows.

#### *Tuberculin Test for Tuberculin Tested Milk.*

The Test must be the double intradermal test. The method of carrying out this test is described in a memorandum by the Tuberculin Committee of the Medical Research Council, copies of which (price 3d.) may be purchased from H.M. Stationery Office.

Every animal in the herd, including any bulls kept in contact with the cows while they are in milk, must be subjected to the test, but it is not necessary for an animal born and bred in the herd to be subjected to the test until it is twelve months of age.

The following are the forms to be used for the certificates of veterinary examinations and tuberculin tests.

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\* Much information with regard to the construction, operation, cleaning and other matters relating to milk-pasteurising plants will be found in a " Report on the Supervision of Milk Pasteurising Plants," 1935 (Reports on Public Health and Medical Subjects, No. 77) published by H.M. Stationery Office, price 1s. 3d. net.

## (A) FORM OF CERTIFICATE FOR TUBERCULIN TESTED MILK HERDS

*Milk (Special Designations) Order, 1926**Tuberculin Tested Milk*

## VETERINARY SURGEON'S CERTIFICATES OF

## (1) Double Intradermal Tuberculin Test and (2) Clinical Examination.

Address of Farm.....

Owner of Herd.....

Number of animals in herd	{	Milch cows .....	}	Total .....
		Heifers .....		
		Bulls .....		
		Other animals .....		

## (1) DOUBLE INTRADERMAL TUBERCULIN TEST

Date of commencement of test .....

Date of last previous test (if any).....

Brand and Manufacturer of Tuberculin used.....

Number of animals tested .....

Number of animals which passed the test.....

Number of animals which failed to pass the test .....

I HEREBY CERTIFY that the double intradermal test was applied to each of the above animals, that.....of the said animals passed the test, and that the results of the test were as indicated in the Schedule hereto.

Signature .....

Date .....

## (2) CLINICAL EXAMINATION

I have this day examined every animal in the above herd, and after submitting each animal separately to a clinical examination, I CERTIFY that no animal in the herd is affected with, or shows symptoms indicative of, any of the following pathological conditions :—

Tuberculosis of the udder, any induration of the udder likely to affect the milk, enlargement of supra-mammary lymphatic glands, tuberculosis in any form which can be recognised clinically, chronic cough with definite clinical symptoms of tuberculosis, anthrax, foot and mouth disease, mastitis, abscess of the udder, retained placenta, actinomycosis of the udder, suppuration of the udder, any comatose condition, any acute septicaemic condition, any septic condition of the uterus, or any infection of the udder or teats, which is likely to convey disease ;

with the exception of\*.....animals described in the Schedule hereto.

Signature .....

Address .....

Date .....

\* Insert number. If none, delete this line.

Notes.—(1) Any departure from the technique usually adopted in applying the test should be indicated and the reasons for the departure should be given.

(2) In describing any reaction or disturbance, abbreviations should be used where possible. An explanation of the abbreviations used should be appended to the foot of the Schedule.

(3) All the particulars indicated in the Schedule must be given as to every animal subjected to the Tuberculin test.





## (B) FORM OF CERTIFICATE FOR ACCREDITED MILK HERDS

*Milk (Special Designations) Order, 1936**Accredited Milk*

## VETERINARY SURGEON'S CERTIFICATE OF CLINICAL EXAMINATION

Address of farm .....

Owner of herd .....

Total number of milch cows in herd.....

I have this day examined all the animals described in the Schedule hereto being all the milch cows in the above herd and after submitting each animal separately to a clinical examination, I CERTIFY that no animal is affected with or shows symptoms indicative of any of the following pathological conditions :—

Tuberculosis of the udder, any induration of the udder likely to affect the milk, enlargement of supra-mammary lymphatic glands, tuberculosis in any form which can be recognised clinically, chronic cough with definite clinical symptoms of tuberculosis, anthrax, foot and mouth disease, mastitis, abscess of the udder, retained placenta, actinomycosis of the udder, suppuration of the udder, any comatose condition, any acute septicaemic condition, any septic condition of the uterus, or any infection of the udder or teats, which is likely to convey disease ;

with the exception of the \* .....animals described in the Schedule hereto.

Signature .....

Address.....

Date .....

## SCHEDULE

Description of animal.		Pathological Condition as specified in Certificate.	Degree. (Very Marked, Marked, Slight.)
Name.	Identification Number.		

## GENERAL REMARKS

## APPENDIX II

## FORMS OF APPLICATION FOR LICENCES

The following forms are suggested as suitable for ordinary cases, but it is not necessary that an application for a licence should be in any particular form.

## FORM A

APPLICATION FORM for a producer's licence to use the designation .....  
..... †

I hereby apply for a licence to use the designation..... †  
in relation to milk produced by me at.....

I enclose a remittance for..... \*  
being the amount of the licence fee.  
Nearest Railway Station to the farm.....  
Times of milking.....a.m. ....p.m.

State whether the milk is to be bottled at the farm.....  
If the application is for a Tuberculin Tested licence, state also whether  
the herd is on the Register of Attested Herds kept by the Minister of Agriculture and Fisheries.....

If it is proposed to sell the milk wholesale, give particulars below :—

Name	Address
of the purchaser(s).	

Signature .....

Address.....

.....

Date .....

† Insert "Tuberculin Tested" or "Accredited" as the case may be.

\* Enquiry should be made of the Licensing Authority as to the fee charged. The maximum fees are shown in paragraph 3.

## FORM B

APPLICATION FORM for a dealer's (bottling) licence to use the designation ..... †  
(To be used where the applicant bottles the milk whether he also retails it or not.)

I hereby apply for a licence to use the designation..... † in relation to milk bottled by me at.....

I enclose a remittance for..... \*  
being the amount of the licence fee.

† Insert "Tuberculin Tested" or "Accredited" as the case may be.

\* Enquiry should be made of the Licensing Authority as to the fee charged. The maximum fee is £2 2s. 0d.

Give the following particulars :—

Name	Address
of producer from whom milk will be purchased.	

If it is proposed to sell the milk wholesale, give particulars below :—

Name	Address
of the purchaser(s).	

Signature .....

Address.....

.....

Date .....

### FORM C

#### APPLICATION FORM for a Pasteuriser's licence.

(To be used where the applicant carries out the process of pasteurisation whether he also retails the pasteurised milk or not.)

I hereby apply for a licence to use the designation "Pasteurised" in relation to milk treated by the pasteurising process at.....

I enclose a remittance for..... \* being the amount of the licence fee.

\* Enquiry should be made of the Licensing Authority as to the fee charged. The maximum fee is £1 1s. 0d.

If it is proposed to sell the milk wholesale, give particulars below :—

Name of the purchaser(s).	Address

Signature .....

Address .....

Date .....

#### FORM D

APPLICATION FORM for a dealer's (retailing) licence to use the designation

..... †  
(To be used where the applicant wishes to retail (1) Tuberculin Tested or Accredited milk obtained by him already bottled or (2) Pasteurised milk obtained by him otherwise than from a pasteurising establishment belonging to him in the same district.)

I hereby apply for a licence to use the designation ..... †  
in relation to milk retailed by me at.....

I enclose a remittance for..... \* being the amount  
of the licence fee.

Give the following particulars :—

Name of producer or distributor from whom milk will be purchased.	Address

Signature .....

Address .....

Date .....

† Insert "Tuberculin Tested", "Accredited" or "Pasteurised" as the case may be.

\* Enquiry should be made of the Licensing Authority as to the fee charged. The maximum fee is 5s. 0d.





his niece and governess contracted the disease, and S. himself, though escaping typhoid, was incapacitated for some little time through inoculation. Before they commenced to supply S., defendants wrote asking him to deal with them, and enclosed a brochure describing the way in which they carried on their business, and in particular the care taken to insure a pure supply of milk, which was stated to be mainly produced on their own farm. It was proved at the trial that, during the summer season, they drew the greater part of their supplies from a large number of other farms, most of the milk being mixed together, at defendants' distributing depot, before being delivered to customers. For the purpose of the trial, it was admitted that the infection was carried in the milk supplied by the defendants. Plaintiffs founded their actions not only upon negligence, but also upon the breach of the statutory duty imposed by the Food and Drugs (Adulteration) Act, 1928, s. 2, which requires sellers of food to supply food of the nature, substance and quality demanded :—

*Held* : (i) defendants were not guilty of negligence at common law ;

(ii) though defendants had no means of knowing that the milk was infected, there had been a breach of the statutory duty under the Food and Drugs (Adulteration) Act, 1928, s. 2, for which they were liable in damages.—*SQUARE v. MODEL FARM DAIRIES (BOURNEMOUTH), LTD.*, [1938] 2 All E. R. 740 ; 159 L. T. 40 ; 54 T. L. R. 821 ; 82 Sol. Jo. 548.

Decision of LEWIS, J., varied. The plaintiffs other than S. failed in their action.—[1939] 2 K. B. 365 ; 1 All E. R. 259 ; 108 L. J. K. B. 198 ; 160 L. T. 165 ; 55 T. L. R. 884 ; 83 Sol. Jo. 152 ; W. N. 56, C. A. [484]

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## FOOD AND DRUGS AUTHORITIES

*See* FOOD AND DRUGS.

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## HARBOURS, DOCKS AND WHARVES

### CASES :—

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Workington Harbour and Dock Board v. Trade Indemnity Co., Ltd. (No. 2),  
[1938] 2 All E. R. 101, H. L. — — — — — 243

### CASES

*Contract for Construction of Dock—Guarantee—Default by Contractor—Action against Guarantor—Engineer's Certificate—Action Dismissed—Second Action Claiming Loss caused by Delay—Res Judicata—Actions on Breaches on Bonds Act, 1696 (c. 11), s. 8.*

A firm of contractors agreed to construct a new and enlarged dock. Defendant company gave the dock board a bond in the sum of £50,000 to guarantee the performance of the contract. The contractors defaulted, and the dock board brought an action against defendant

company upon the bond. They relied upon an engineer's certificate showing that the contractors owed them £78,000, which they had failed to pay. The action was dismissed. The dock board then started a second action, claiming damages caused by delay, owing to the contractors not having proceeded with due diligence and expedition. Defendant company applied to have the proceedings stayed, on the ground that the same matter had already been finally settled in the first action :—

*Held* : as the second action was based on precisely the same breaches as those in the first action, and claimed the same damages, although supported by different evidence, a plea of *res judicata* would succeed, and the second action ought, therefore, to be dismissed.

Order of Court of Appeal [1937] 3 All E. R. 139, affirmed.—WORK-  
INGTON HARBOUR AND DOCK BOARD *v.* TRADE INDEMNITY CO., LTD.  
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## STATUTES

### THE STREET PLAYGROUNDS ACT, 1938

(1 & 2 Geo. 6, c. 37)

*An Act to empower local authorities to close streets to enable them to be used as playgrounds for children.* [486] [13th July, 1938.]

#### 1. Power to prohibit traffic on roads to be used as playgrounds.—

(1) The council of any county (other than the administrative county of London), metropolitan borough, county borough, borough or urban district, shall have power, for the purpose of enabling any roads within their area in respect of which they are the highway authority to be used as playgrounds for children, to make an order prohibiting or restricting, subject to such exceptions and conditions as to occasional user or otherwise as may be specified in the order, the use of any specified

road by vehicles, or by vehicles of any specified class or description, either generally or on particular days or during particular hours :

Provided that an order made under this section with respect to any road shall make provision for permitting reasonable access to premises situated on or adjacent to the road. [487]

(2) No order made under this section shall be of any effect unless and until it is confirmed by the Minister of Transport, and the Minister, if he confirms the order, may confirm it either without modification or subject to such modifications as he thinks fit, but he shall not confirm an order until twenty-eight days at least have elapsed since the making of the order and, before confirming it, shall consider any objections which may have been made to him against the order and, if he thinks fit, may cause a public inquiry to be held. [488]

(3) Any order made under this section may be revoked, varied or amended by an order made in like manner as the original order. [489]

(4) The Minister of Transport may at any time after giving notice in writing to the council by whom an order under this section was made and after holding, if he thinks fit, a public inquiry, revoke, vary or amend the order. [490]

(5) Any person who uses a vehicle, or causes or permits a vehicle to be used, in contravention of an order in force under this section shall be liable on summary conviction to a fine not exceeding five pounds and, in the case of a second or subsequent conviction, to a fine not exceeding ten pounds. [491]

(6) The power of the Minister of Transport under subsection (6) of section twenty-nine of the Road and Rail Traffic Act, 1933, to make regulations with respect to the making and confirmation of orders under that section shall include power to make regulations for prescribing the procedure to be followed in connection with the making of orders by a council under this section and the confirmation thereof and for prescribing the manner in which the council shall publish notice of the fact that any such order has been made and confirmed and of its effect. [492]

For the Road and Rail Traffic Act, 1933, s. 29 (6), see 26 Halsbury's Statutes 895.  
For regulations, see the Street Playgrounds Orders (Procedure) Provisional Regulations, 1938.

## **2. Power to make byelaws with respect to roads used as playgrounds.**

—(1) A council by whom an order may be made under the foregoing section shall have power, in relation to any road as respects which an order is made by them prohibiting or restricting the use of the road by vehicles, or by vehicles of any specified class or description, for the purpose of enabling the road to be used as a playground for children, to make byelaws authorising the use of the road for that purpose, and making provision with respect to the admission of children to the road when used as a playground, and with respect to the safety of children so using the road and their protection from injury by vehicles using the road for access to premises situated on or adjacent to the road or otherwise, and generally with respect to the proper management of the road when used as a playground as aforesaid. [493]

(2) The Minister of Transport shall be the confirming authority as respects byelaws made under this section. [494]

**3. Provisions as to inquiries.**—(1) For the purpose of any inquiry held by the Minister of Transport in pursuance of this Act, the person

appointed to hold the inquiry may by summons require any person to attend at such time and place as is specified in the summons to give evidence or to produce any documents in his custody or under his control which relate to any matter in question at the inquiry, and may take evidence on oath, and for that purpose administer oaths, or may, instead of administering an oath, require the person examined to make and subscribe a declaration of the truth of the matter respecting which he is examined :

Provided that no person shall be required, in obedience to such a summons, to go more than ten miles from his place of residence unless the necessary expenses of his attendance are paid or tendered to him. [495]

(2) Every person who refuses or wilfully neglects to attend in obedience to a summons issued under this section, or to give evidence, or who wilfully alters, suppresses, conceals, destroys, or refuses to produce any book or other document which he may be required to produce for the purpose of this section, shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment. [496]

(3) Where any such inquiry is held, the Minister may make such order as to the payment of the costs incurred by him in connection with the inquiry (including such reasonable sum not exceeding five guineas a day, as he may determine, for the services of any officer engaged in the inquiry) by such party to the inquiry as he may direct, and the Minister may certify the amount of the costs so incurred, and any amount so certified and directed by the Minister to be paid by any party shall be recoverable from that party either as a debt to the Crown or by the Minister summarily as a civil debt. [497]

#### 4. Application to Scotland. [498]

5. Short title and extent.—(1) This Act may be cited as the Street Playgrounds Act, 1938.

(2) This Act shall not extend to Northern Ireland. [499]

## CASES

*Public Footpath—Presumption of Dedication*—"Enjoyed by the Public as of Right"—*Rights of Way Act, 1932 (c. 45), s. 1.*

(i) The words in the Rights of Way Act, 1932, s. 1 (1), "actually enjoyed by the public as of right and without interruption," mean that the way has been used without compulsion, secrecy, or licence, *nec vi, nec clam, nec precario*.

(ii) (*Per Scott, L.J.*) ; the party asserting the right of way has not to prove the absence of compulsion, secrecy, or licence. It is for the party denying the existence of the right of way to prove compulsion, secrecy, or licence.

(iii) (*Per Scott, L.J.*) ; a mere discontinuance of user does not amount to interruption. This can only arise from an interference with the enjoyment of the right of passage.



(iv) (*Per FARWELL, J.*); where the user is for a period of less than twenty years, it is still possible, notwithstanding the Act of 1932, to prove the existence of a public right of way by implied dedication.—*JONES v. BATES*, [1938] 2 All E. R. 237; 158 L. T. 507; 102 J. P. 391; 54 T. L. R. 648; 82 Sol. Jo. 314; 36 L. G. R. 227, C. A. [500]

*Towpath—Erection of Posts—Benefit to Public—Nuisance—Injunction.*

Defendant acquired certain property adjoining the towpath along the River Thames. The conveyance described the property as bounded by the towpath, and proceeded to give defendant a right of way over the towpath. Defendant, it was alleged, had suffered annoyance from the use of the towpath by persons bringing motor-cars, ice-cream barrows and other vehicles thereon. To prevent this he erected upon the towpath posts about 3 feet apart. The conservators had erected similar posts at the other end of the path. It was contended that (a) the property in the towpath had passed to defendant under the conveyance, and (b) the public were so benefited by the erection of the posts that they could not complain of them as a nuisance:—

*Held*: (i) upon the construction of the conveyance the towpath did not pass thereunder to defendant, as a person cannot be granted a right of way over his own land;

(ii) the benefit to the public by the prevention of the vehicular traffic was not a sufficient justification for the obstruction, and an injunction against such obstruction ought to be granted.—*A.-G. v. WILCOX*, [1938] Ch. 934; [1938] 3 All E. R. 367; 107 L. J. Ch. 425; 59 L. T. 212; 54 T. L. R. 985; 82 Sol. Jo. 566. [501]

*Boundary of Highway—Ditch Inside Fence—Presumption—Onus of Proof—Statutory Right to Fill In—Highway Act, 1835 (c. 50), s. 67—Highway Act, 1854 (c. 101), s. 48.*

A highway was bounded by a fence, and on the road side of the fence there was a ditch. The land immediately adjoining the ditch belonged to plaintiffs. In 1937, defendants, without the consent or knowledge of plaintiffs, laid pipes in a portion of the ditch and filled it in completely. They justified these acts on the grounds (i) that the portion of the ditch filled in was part of the highway, and (ii) that, if that were not so, the acts were within the scope of their statutory powers. The ditch clearly served the purpose of carrying off the overflow from a pond on plaintiffs' land and the surface-water from that land. It also carried off the surface-water from the road. At all times, the cleaning and repair of the ditch had been undertaken by plaintiffs:—

*Held*: (i) the presumption that the ditch did not form part of the highway had not been rebutted, and the ditch was vested in plaintiffs;

(ii) the highway authority had no statutory power to fill in the ditch without the owner's consent, and plaintiffs were therefore entitled to a declaration of title and nominal damages.—*HANSCOMBE v. BEDFORDSHIRE COUNTY COUNCIL*, [1938] Ch. 944; [1938] 3 All E. R. 647; 107 L. J. Ch. 433; 159 L. T. 357; 102 J. P. 443; 54 T. L. R. 1093; 82 Sol. Jo. 697. [502]

*Roadside Waste—Fences and Boundaries—Presumption of Dedication—Rebuttable—Public User.*

Plaintiffs were owner and occupier respectively of a farm which plaintiff Hinds had bought in December 1918. They claimed that an

unenclosed piece of land bordering the highway abutting on their land was part of the farm, and in 1936 they proceeded to fence it. Thereupon defendants by their servants or agents removed the fence, claiming the land to be roadside waste and part of the highway in relation to which defendants were the highway authority. The fence erected in 1936 was in a continuous line with fences on adjoining parts of the highway, but there was an old fence at a distance from the highway varying from 37 ft. to 99 ft. Evidence was given that animals had in the past strayed upon the land from the highway and the gypsies had encamped there. Defendants contended that, in the case of a highway running between fences, there is a presumption that the public right of way extends over the whole space of ground between the fences, and is not confined to the metalled portion, and that *prima facie* the fences are to be taken as having been originally put up for the purpose of separating land dedicated to the public as highway from land not so dedicated :—

*Held* : (i) such a presumption would not be raised unless the circumstances were such as to make it reasonable to do so ;

(ii) the circumstances in this case were such as did not raise such a presumption.—*HINDS AND DIPLOCK v. BRECONSHIRE COUNTY COUNCIL*, [1938] 4 All E. R. 24. [503]

*Streets—Making Up—Premises to which Access Obtained from Highway—Inclusion in Apportionment—No Resolution of Local Authority—Discretion of Local Authority—Private Street Works Act, 1892 (c. 57), ss. 7 (e), 10.*

Certain private street works were being done in Hornchurch, where the provisions of the Private Street Works Act, 1892, had been adopted. It was alleged that the chief users of the street were the Essex County Council, who were the owners of a sanatorium which did not front, adjoin or abut on the street, but to which access was obtained from the street. The urban district council had not passed any resolution under s. 10 of the Act of 1892, and the county council were not included in the provisional apportionment. Objection being taken to the apportionment before the justices, it was amended, and the urban district council were directed to serve a notice on the county council so that they might be made a party to the proceedings :—

*Held* : upon the true construction of the Private Street Works Act, 1892, s. 10, it is in the sole discretion of the local authority whether or not they will pass a resolution that the matters therein referred to shall be regarded in the apportionment. If they do not pass such a resolution, no objection upon this head is maintainable before the justices, notwithstanding the provision of s. 7 (e). In the circumstances of this case, therefore, it was not open to the justices to entertain the objection made to this apportionment.—*HORNCHURCH URBAN DISTRICT COUNCIL v. WEBBER*, [1938] 1 K. B. 698 ; [1938] 1 All E. R. 309 ; 107 L. J. K. B. 438 ; 158 L. T. 258 ; 102 J. P. 167 ; 54 T. L. R. 358 ; 82 Sol. Jo. 157 ; 36 L. G. R. 262, D. C. [504]

*Private Street Works—Resolution of Local Authority that Apportionment be Based on Degree of Benefit to be Derived by any Premises—No Exercise by Local Authority of Statutory Power to Require a Variation of Relative Widths of Existing Carriageway and Footways—Discretion of Local Authority—Whether Proposed Works Reasonable—Wider Road*

*for Benefit of Through Traffic—Private Street Works Act, 1892 (c. 57), ss. 7 (d), 10.*

Certain private street works were being done in Hornchurch, where the provisions of the Private Street Works Act, 1892, had been adopted. Pursuant to s. 10 of the Act of 1892, appellant council passed a resolution to the effect that, in settling the provisional apportionment of expenses of such works, regard be had to the greater or less degree of benefit to be derived by any premises from such works. Appellant council did not exercise the power conferred on it by the Public Health Act, 1925, s. 35, to require a variation of the relative widths of the existing carriageway and footways of the street. Objections were taken to the provisional apportionment, on the grounds that the proposed works were unreasonable, as the road was a connecting road and the expenses were largely incurred for the benefit of through traffic. The justices dismissed the objections, but on appeal to quarter sessions the objections were upheld :—

*Held* : as the Private Street Works Act, 1892, s. 10, provides that it is in the sole discretion of the local authority whether or not it will pass a resolution affecting the mode of apportionment, it was not open to the court to uphold the objections to the provisional apportionment.—*HORNCHURCH URBAN DISTRICT COUNCIL v. ALLEN*, [1938] 2 All E. R. 431 ; *sub nom. ALLEN v. HORNCHURCH URBAN DISTRICT COUNCIL*, [1938] 2 K. B. 654 ; 107 L. J. K. B. 741 ; 159 L. T. 473 ; 102 J. P. 393 ; 54 T. L. R. 1063 ; 82 Sol. Jo. 729 ; 36 L. G. R. 441, D. C. [505]

*Repair—Bridge Carrying Road Over Railway—Liability of Railway Company for Nonfeasance—Extent of Liability to Repair—Railways Clauses Consolidation Act, 1845 (c. 20), s. 46—Public Authorities—Limitation of Actions—Whether Railway Company a Public Authority—Public Authorities Protection Act, 1893 (c. 61), s. 1.*

Plaintiff, a steam-crane driver, in proceeding to his work on his bicycle, had to cross a bridge belonging to defendant company. The road over it, and the approach thereto, were alleged to be in a bad state of repair, there being several potholes and a rut, about two feet from the near side, several inches deep in some places, extending a number of yards from the crown of the bridge down the incline, and said to have been caused in the course of time by rainwater. Plaintiff's machine got into the rut and he was thrown to the ground and suffered severe injuries to his head. It was found as a fact that the accident was caused by the want of repair of the road over the bridge. The claim was based on negligence, nuisance, and breach of the statutory duty of defendants to maintain the road on the bridge and the approach thereto. The bridge had been constructed by defendants' predecessors under the South Western Exeter Extension Act, 1856, incorporating the Railways Clauses Consolidation Act, 1845. It was contended on behalf of defendants (i) that defendants were in a position similar to that of a highway authority, and were not liable for nonfeasance ; (ii) that they were entitled to the benefit of the Public Authorities Protection Act, 1893 ; (iii) that they were only liable, if at all, to maintain the road over the bridge for the purposes of the traffic using the road in the year in which it was constructed :—

*Held* : (i) by the Railways Clauses Consolidation Act, 1845, s. 46, the company were liable for nonfeasance as well as misfeasance ;

(ii) a railway company is not a public authority within the meaning of that term as used in the Public Authorities Protection Act, 1893, s. 1 ;

(iii) the road was in fact in a condition which would have been dangerous to traffic as it was at the date at which the bridge was constructed; but the duty of a railway company under the Railways Clauses Consolidation Act, 1845, s. 46, is to maintain the bridge and its approaches in the state they are when constructed in accordance with that section, and that necessarily implies an absence of dangerous ruts.—*SWAIN v. SOUTHERN RAILWAY CO.*, [1938] 3 All E. R. 705; 159 L. T. 462; 54 T. L. R. 1119; 82 Sol. Jo. 713; 36 L. G. R. 569.

Decision of HUMPHREYS, J., affirmed:—[1939] 2 K. B. 560; 2 All E. R. 794; 108 L. J. K. B. 827; 160 L. T. 606; 55 T. L. R. 805; 83 Sol. Jo. 476; W. N. 225, C. A. [506]

*Breach of Statutory Duty—Street Refuge—Duty of Local Authority to Light—Metropolis Management Act, 1855 (c. 120), ss. 108, 130.*

An illuminated bollard at one end of a tram refuge had been damaged in an accident. Defendant council had placed a light upon it, but this light had, for some unexplained reason, gone out. As a result of this, plaintiff's motor-car collided with the bollard, and plaintiff was injured:

*Held*: defendant council, having erected the refuge and bollards, were under a continuing duty to keep them adequately lighted. They were, therefore, liable to plaintiff in respect of the injury he had sustained.—*POLKINGHORN v. LAMBETH BOROUGH COUNCIL*, [1938] 1 All E. R. 339; 158 L. T. 127; 102 J. P. 131; 54 T. L. R. 345; 82 Sol. Jo. 94; 36 L. G. R. 130. C. A. [507]

*Statutory Powers—Erection of Bus-shelter—Interference with Access to Private Premises—Authority Acting Reasonably—Swindon Corporation Act, 1926 (c. xciii), ss. 21, 25.*

Plaintiffs were the freeholder and leaseholders of two houses and a piece of vacant land between the two houses. Both the houses and the land abutted on the public highway, and immediately in front of the piece of vacant land the Swindon Corporation had erected a shelter for the use of persons intending to travel by buses owned by the corporation and by omnibus companies. The shelter had been erected in pursuance of statutory powers, which were general powers to erect such shelters on the public streets. The private Act giving these powers included an express prohibition of the erection of such shelters in places where there would be interference with the access to the property of the Great Western Railway Co. without the consent of that company. Upon the facts, it was held that the erection of the shelter was an interference with the rights of plaintiffs, but that the corporation had acted reasonably:—

*Held*: although the corporation was not bound by the Act to erect the shelter in a specific place, it was authorised by the Act to do something which the legislature must have contemplated would be an interference with private rights, and, as it had acted reasonably in choosing the site of the shelter, plaintiffs were not entitled to damages for interference.—*EDGINGTON, BISHOP AND WITHEY v. SWINDON BOROUGH COUNCIL*, [1938] 4 All E. R. 57; 159 L. J. 550; 102 J. P. 473; 55 T. L. R. 12; 82 Sol. Jo. 931. [508]

# HIGHWAYS, RIGHTS OF PRIVATE PERSONS AS TO

See HIGHWAYS.

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## HOLIDAYS

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## STATUTES

### THE HOLIDAYS WITH PAY ACT, 1938

(1 & 2 Geo. 6, c. 70)

*An Act to enable wage regulating authorities to make provision for holidays and holiday remuneration for workers whose wages they regulate, and to enable the Minister of Labour to assist voluntary schemes for securing holidays with pay for workers in any industry.* [509]

[29th July, 1938.]

**1. Holidays.**—(1) Subject to the provisions of this Act, a wage regulating authority may direct that any workers for whom a minimum rate of wages or statutory remuneration is being or has been fixed by them shall be entitled to be allowed holidays of such duration as may be directed by the authority. [510]

(2) Any direction given under this section shall provide for the duration of any holiday which an employer is thereby required to allow to a worker being related to the duration of the period for which the worker shall have been employed or engaged to be employed by him, and, subject as aforesaid, any such direction may make provision as to the times at which or the periods within which, and the circumstances in which, any such holiday shall be allowed :

Provided that no such direction shall provide for a worker whose rates of wages are fixed under the Trade Boards Acts, 1909 and 1918, the Agricultural Wages (Regulation) Act, 1924, or the Agricultural Wages (Regulation) (Scotland) Act, 1937, being entitled to be allowed holidays for periods exceeding in the aggregate one week in any period of twelve months, or, in the case of a worker whose rates of wages are fixed under the said Act of 1924 or the said Act of 1937, to be allowed holidays of continuous periods exceeding three consecutive days. [511]

For the Trade Boards Acts, 1909 and 1918, see 19 Halsbury's Statutes 692, 708 ; and for the Agricultural Wages (Regulation) Act, 1924, see 1 Halsbury's Statutes 127.



(3) For the purposes of the last foregoing subsection, the expression "week" means, in relation to any worker whose rates of wages are fixed under the said Act of 1924 or the said Act of 1937 a period of seven days, and in relation to any other worker such period as may be determined by the wage regulating authority to be his normal working week. [512]

(4) The holidays which a worker is entitled to be allowed in pursuance of any direction given under this section shall, unless the direction otherwise provides, be in addition to any holidays or half-holidays to which he may be entitled under any other enactment. [513]

(5) If any employer who is required in pursuance of a direction given under this section to allow to a worker a holiday of any duration fails to allow to him a holiday of that duration, the employer shall be liable on summary conviction in respect of each offence to a fine not exceeding twenty pounds. [514]

(6) All fines imposed under this section in respect of contraventions of a direction given by the Road Haulage Central Wages Board shall be dealt with in like manner as fines imposed in respect of offences under the Road Haulage Wages Act, 1938. [515]

See s. 13 of the Road Haulage Wages Act, 1938, 31 Halsbury's Statutes 682.

**2. Holiday remuneration.**—(1) Where a wage regulating authority in exercise of the powers conferred by this Act direct that any workers shall be entitled to be allowed holidays, the authority shall make provision for securing that the workers shall receive pay in respect of the period of the holiday, and, without prejudice to any other power of a wage regulating authority in that behalf, the power of any Trade Board or Agricultural Wages Committee to fix minimum rates of wages for any workers shall include power to fix separate minimum rates of wages to be paid to those workers by way of pay in respect of such holidays and, subject to the provisions of any regulations made under this Act, references in the Trade Boards Acts, 1909 and 1918, the Agricultural Wages (Regulation) Act, 1924, and the Agricultural Wages (Regulation) (Scotland) Act, 1937, respectively, to minimum rates of wages shall be construed accordingly. [516]

For the Trade Boards Acts, 1909 and 1918, see 19 Halsbury's Statutes 692, 708; and for the Agricultural Wages (Regulation) Act, 1924, see 1 Halsbury's Statutes 127.

(2) Any holiday remuneration (whether fixed as aforesaid or fixed by the Road Haulage Central Wages Board) shall accrue, and shall become payable, respectively, at such times and subject to such conditions as may be directed by the wage regulating authority, and, notwithstanding the provisions of this Act requiring that holiday remuneration shall be payable in respect of the period of the holiday which a worker is entitled to be allowed thereunder, such directions may make provision for securing that any holiday remuneration which has accrued due to a worker during his employment by any employer shall, in the event of his ceasing to be employed by that employer before he becomes entitled to be allowed a holiday by him, nevertheless become payable by the employer to the worker. [517]

**3. Application of certain enactments and power to make regulations in connection therewith.**—(1) The following provisions, that is to say:—

(a) the provisions of the Trade Boards Acts, 1909 and 1918, relating to the procedure for fixing, cancelling and varying minimum

rates and for making orders confirming such rates and the cancellation and variation thereof ;

(b) the provisions of the Agricultural Wages (Regulation) Act, 1924, and the Agricultural Wages (Regulation) (Scotland) Act, 1937, as the case may be, relating to the procedure for fixing, cancelling and varying minimum rates and for making orders giving effect to such rates and the cancellation and variation thereof ; and

(c) the provisions of the Road Haulage Wages Act, 1938, relating to the procedure for the submission of proposals for fixing remuneration and for the amendment and cancellation of road haulage wages orders and the making of such orders,

shall, subject to any modifications prescribed by regulations made by the appropriate Minister, apply in relation to the giving, cancellation, variation and amendment of directions under this Act ; and the provisions mentioned in paragraphs (a) and (b) of this subsection shall, subject to any such modifications as aforesaid, apply in relation to the fixing, cancellation, and variation of holiday remuneration by a Trade Board, and an Agricultural Wages Committee, respectively, and to the making of orders confirming or giving effect to such rates and the cancellation and variation thereof. [518]

For the provisions referred to in para. (a), see s. 4 of the Trade Boards Act, 1909 (19 Halsbury's Statutes 693), and ss. 3 and 4 of the Trade Boards Act, 1918 (19 Halsbury's Statutes 710, 711).

For the provisions of the Agricultural Wages (Regulation) Act, 1924, referred to in para. (b), see ss. 2, 3 and 5 of that Act (1 Halsbury's Statutes 127—129).

For the provisions of the Road Haulage Wages Act, 1938, referred to in para. (c), see s. 3 of that Act, 31 Halsbury's Statutes 682.

(2) The appropriate Minister may make regulations for giving effect to the purposes of this Act, and, in particular, for modifying any provisions of the Acts aforesaid in their application for the purposes of of this Act and for applying, with or without modifications, for the purposes of this Act any such provisions in addition to those expressly made applicable thereby. [519]

(3) All regulations made under this section shall be laid as soon as may be before Parliament, and, if either House within the next twenty-eight days on which that House has sat after any such regulation has been laid before it resolves that the regulation be annulled, it shall thenceforth be void, but without prejudice to the validity of anything done in the meantime thereunder or to the making of a new regulation. [520]

#### 4. Power of Minister to assist schemes for securing holidays with pay.

—(1) Where a scheme for securing holidays with pay for any workers in an industry or in a branch of an industry is, on the joint application of an organisation representing employers and an organisation representing workers in the industry or branch, approved by the Minister of Labour, the Minister may in accordance with arrangements made by him with the consent of the Treasury assist the administration of the scheme by attaching officers of the Ministry of Labour to help in the administration thereof and by such other means as he thinks fit. [521]

(2) The Minister of Labour may, in accordance with such arrangements as aforesaid, issue on behalf of employers to workers to whom any such scheme applies sums by way of holiday payments, but any arrangement making provision for the issue of any such sums shall

also make provision for paying to the Minister any sums to be so issued by him and any expenses incurred by him which are attributable to the scheme. [522]

(3) Any expenses incurred by the Minister of Labour in connection with any such scheme as aforesaid shall be defrayed out of moneys provided by Parliament. [523]

**5. Definitions.**—In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say :—

“ Appropriate Minister ” means in relation to the Trade Boards Acts, 1909 and 1918, and in relation to the Road Haulage Wages Act, 1938, the Minister of Labour, in relation to the Agricultural Wages (Regulation) Act, 1924, the Minister of Agriculture and Fisheries, and in relation to the Agricultural Wages (Regulation) (Scotland) Act, 1937, the Department of Agriculture for Scotland ;

For the Trade Boards Acts, 1909 and 1918, see 19 Halsbury's Statutes 692, 708. For the Road Haulage Wages Act, 1938, see 31 Halsbury's Statutes 682. For the Agricultural Wages (Regulation) Act, 1924, see 1 Halsbury's Statutes 127.

“ Holiday remuneration ” means remuneration in accordance with a separate minimum rate of wages fixed under subsection (1) of section two of this Act or holiday remuneration fixed under the Road Haulage Wages Act, 1938, as the case may be ;

For the Road Haulage Wages Act, 1938, see 31 Halsbury's Statutes 682.

“ Wage regulating authority ” means a Trade Board, an Agricultural Wages Committee or the Road Haulage Central Wages Board, as the case may be. [524]

**6. Short title and extent.**—(1) This Act may be cited as the Holidays with Pay Act, 1938.

(2) This Act shall not extend to Northern Ireland. [525]

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## HORSEFLESH, SALE OF

*See FOOD AND DRUGS.*

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## HORSES, PONIES, MULES OR ASSES

*See ANIMALS.*

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# HOSPITAL STAFF

See HOSPITALS.

## HOSPITALS

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### ORDERS, CIRCULARS AND MEMORANDA

#### PUBLIC HEALTH (NURSING HOMES REGISTRATION FORM) REGULATIONS, 1938

*S. R. & O., 1938, No. 32*

*January 21, 1938*

93,880

The Minister of Health, in exercise of the powers conferred on him by subsection (2) of section 283 of the Public Health Act, 1936, hereby makes the following Regulations.

1. These Regulations may be cited as the Public Health (Nursing Homes Registration Form) Regulations, 1938, and shall come into operation on the date hereof.

2. The form set out in the Schedule hereto or a form to the like effect shall in lieu of any form previously prescribed be the form to be used in connection with an application for registration of a nursing home made under subsection (2) of section 187 of the said Act.

3. The Interpretation Act, 1889, applies to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

### SCHEDULE

#### NURSING HOME

##### *Application for Registration*

I (or We) hereby apply to the Council in pursuance of the provisions of Section 187 of the Public Health Act, 1936, for registration in respect of a Nursing Home (as defined in Section 199 (1) of the Act), and furnish below particulars in regard to the Home :—

1.—(a) Full name of the applicant or applicants. (a)

- (b) Private address of applicant. (b)
- (c) Technical qualifications (if any). (c)
- (d) Nationality of applicant. (d)

2. If the application is made by a company, society, association or body, state :—

- (a) Full name of individual responsible for the management of the Home. (a)
- (b) Private address of person named under (a). (b)
- (c) Registered or principal office of company, society, association or body. (c)

3.—(a) Name, style or title under which the Home is carried on. (a)

(b) Address of the Home. (b)

(c) Brief description of situation, construction, accommodation and equipment of the premises. (c)

(d) What other business (if any) is or will be transacted on the same premises as the Home ? (d)

4. Number of patients to be provided for :—

- (a) Maternity patients. (a)
- (b) Other patients. (b)

5.—(a) Names and qualifications of nursing staff. (a)

(b) Where are the nursing staff accommodated ? (b)

6. Names and qualifications of resident or visiting physicians or surgeons.

7. If the Home is not a Maternity Home (as defined in Section 199 (1) of the Act) state :—

- (a) Whether it is and will be under the charge of a registered medical practitioner or a qualified nurse (as defined in Section 199 (1) of the Act), resident in the Home (giving name and qualifications). (a)
- (b) What proportions of qualified nurses there is among the persons superintending or employed in the nursing of the patients. (b)

If the Home is a mixed Home (i.e. makes provision for maternity and non-maternity patients) this question should be answered with reference to the provision made for non-maternity patients.



8. If the Home is a Maternity Home (as defined in Section 199 (1) of the Act) state :—

(a) Whether the person who has and will have the superintendence of the nursing of the patients is a qualified nurse or a certified midwife (give name and qualifications). (a)

(b) Whether there is any person employed or proposed to be employed in attending any woman in the Home in childbirth or in nursing any patient in the Home, who is not either a registered medical practitioner, a certified midwife, a pupil midwife (as defined in Section 199 (1) of the Act) or a qualified nurse (as defined in the same). (b)

If the Home is a mixed Home this question should be answered with reference to the provision made for maternity patients.

9. Does the applicant employ in connection with the Home any persons of alien nationality? If so, give number and particulars.

10. What fees are charged to patients?

11. Address of any other Nursing Home or business in which applicant is interested, and the nature and extent of applicant's interest therein.

I (or We) declare that the above particulars are true in every respect.

Date                      19 .

Signature or Signatures.

[526]

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## STATUTES

### THE HOUSING (FINANCIAL PROVISIONS) ACT, 1938 (1 & 2 Geo. 6, c. 16)

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*An Act to amend the law with respect to the making of contributions out of the Exchequer and by local authorities in respect of housing accommodation provided for the working classes, and with respect to arrangements between local authorities and other persons for the provision of housing accommodation; and for purposes connected with the matters aforesaid. [527] [30th March, 1938.]*

*Government Contributions.*

**1. General provision for contributions in respect of housing accommodation provided by local authorities.**—(1) Subject to the provisions of this Act, the Minister shall undertake to make, and shall make, in respect of each new house completed after the beginning of the year nineteen hundred and thirty-nine by way of housing accommodation provided by a local authority and approved for the purposes of this section by the Minister, being housing accommodation to which this section applies, payment to that local authority of an annual contribution of the amount of five pounds ten shillings for a period of forty years :

Provided that no contribution shall be payable under this section in respect of any house in respect of which a contribution is payable under the next following section. [528]

(2) The annual amount of any contribution which, under this section, the Minister must make, and undertake to make, in respect of a flat provided in a block of flats on a site the cost of which as developed (ascertained in accordance with the Schedule to this Act) exceeds one thousand five hundred pounds per acre, shall, instead of five pounds ten shillings, be the appropriate amount prescribed by that Schedule. [529]

(3) If, with respect to any proposals of the council of any non-county borough or urban district to provide any housing accommodation to which this section applies, the Minister, upon an application made by the borough or district council, is satisfied after consultation with the county council and having regard to any conditions which may be laid down by the Treasury,—

(a) that the houses in the borough or district which are occupied by members of the working classes are let at rents substantially less on the average than the average of the rents of houses so occupied in non-county boroughs and urban districts in England generally, and

- (b) that when the amount of the expenditure incurred or to be incurred by the borough or district council under the enactments relating to housing is considered in relation to the financial resources of the borough or district, the provision of the said accommodation would impose an undue burden on the borough or district, unless the annual amount of any contribution payable under this section in relation to that accommodation exceeds five pounds ten shillings,

then, if the Minister thinks fit so to determine, the annual amount of any contribution which under this section he must make, and undertake to make, in respect of any house provided by the borough or district council in carrying out the said proposals (being a contribution which apart from this subsection would be of the annual amount of five pounds ten shillings) shall, instead of that amount, be six pounds ten shillings. [530]

(4) The last preceding subsection shall have effect in relation to any proposals of the council of a rural district to provide any housing accommodation to which this section applies, as that subsection has effect in relation to proposals of the council of any non-county borough or urban district subject however to the modification that for any reference in that subsection to the borough or district council, to the borough or district, or to non-county boroughs and urban districts there shall be substituted a reference to the rural district council, to the rural district or to rural districts, as the case may be. [531]

- (5) This section applies to housing accommodation which—

(a) is rendered necessary—

(i) by displacements of persons occurring in connection with any action taken by the local authority under the principal Act for the demolition of insanitary houses, for dealing with clearance or improvement areas or for closing parts of buildings, or

(ii) by displacements, occurring in the carrying out of re-development in accordance with a re-development plan, from houses which are unfit for human habitation and are not capable of being rendered fit for human habitation at reasonable expense, or

- (b) is required for the purpose of the abatement of overcrowding in the area of the local authority, or rendered necessary by displacements, occurring in the carrying out of re-development as aforesaid, from houses other than such as are mentioned in sub-paragraph (ii) of the preceding paragraph. [532]

(6) As respects the administrative county of London exclusive of the City of London, both the London County Council and the council of a metropolitan borough shall be local authorities for the purposes of this section except subsection (3) thereof. [533]

(7) Subsection (2) of section eighty-nine, subsection (3) of section one hundred and sixty-nine and subsection (2) of section one hundred and seventy-two of the principal Act shall have effect as if the references in those subsections to section one hundred and five of that Act included references to this section. [534]

**2. Contributions in respect of agricultural housing accommodation provided by local authorities.**—(1) Subject to the following provisions of this Act, the Minister shall undertake to make, and shall make, in respect of each new house completed after the beginning of the year nineteen hundred and thirty-nine which, with the approval of the Minister, is provided by the council of a county district by way of housing accommodation required for the agricultural population of the district, payment to that council of an annual contribution of the amount of ten pounds for a period of forty years :

Provided that if, with respect to any proposals of such a council to provide such, housing accommodation as aforesaid, the Minister, upon an application made by the council, is satisfied, after consultation with the county council and having regard to any conditions which may be laid down by the Treasury, that the provision of the said accommodation would, without an increase of any contribution which would otherwise be payable under this section in relation to that accommodation, impose an undue burden on the county district by reason of—

(a) the exceptionally high cost of providing the accommodation, and

(b) the amount of the rents which it will be practicable for the council of the county district to charge for the accommodation, then, if the Minister thinks fit so to determine, the annual amount of any contribution which under this section he must make, and undertake to make, in respect of any house provided by the last-mentioned council in carrying out the said proposals shall, instead of ten pounds, be such greater amount not exceeding twelve pounds as the Minister may determine. [535]

(2) The council of a county district shall secure that a number of houses equal to the number of houses (if any) in respect of which contributions are payable under this section to the council are reserved for members of the agricultural population, except in so far as the demand for housing accommodation in the county district on the part of members of the agricultural population can be satisfied without such reservation. [536]

(3) Section one hundred and thirty-six of the principal Act shall apply for the purposes of this section as it applies for the purposes of the provisions of the principal Act which relate to Government contributions to the expenses of local authorities in providing accommodation available for displaced persons; and subsection (2) of section eighty-nine, subsection (3) of section one hundred and sixty-nine and subsection (2) of section one hundred and seventy-two of the principal Act shall have effect as if the references in those subsections to section one hundred and five of that Act included references to this section. [537]

For s. 136 of the principal Act, see 29 Halsbury's Statutes 659.

**3. Contributions in respect of agricultural housing accommodation provided by persons other than local authorities.**—(1) Where the council of a county district are satisfied that in any particular case housing accommodation required for members of the agricultural population of the district could more conveniently be provided by some person other than the council, they may, subject to any conditions imposed



by the Minister, make arrangements for the provision of such accommodation by that person; and if the Minister is satisfied that the arrangements are such as to secure that any house provided in pursuance thereof—

(a) is reserved for members of the agricultural population, and

(b) if let, is let at a rent not exceeding—

(i) the weekly rent which, by any order of the appropriate agricultural wages committee in force at the time of the letting, is determined as the value at which the benefit or advantage of a cottage is to be reckoned as payment of wages in lieu of payment in cash for the purpose of any minimum rate of wages fixed by the said committee under the Agricultural Wages (Regulation) Act, 1924, or

(ii) if no such rent is so determined, such weekly rent as may be determined by the council of the county district, and

(c) is suitable in respect of its size and construction, then, subject to the following provisions of this Act, the Minister may undertake to make, and may make, in respect of each new house which, with his approval, is provided in pursuance of the arrangements, payment to that council of an annual contribution of such amount not exceeding ten pounds as the Minister may determine, being a contribution payable for a period of forty years; and in that event the council shall pay by way of annual grant to the owner of the house an amount not less than the contribution paid by the Minister:

Provided that no contribution under this section shall be payable in respect of any house for any year, unless—

(i) the conditions specified in paragraphs (a) and (b) of this subsection are observed in relation to that house throughout that year, and

(ii) the council of the county district certify to the Minister that all reasonable steps have been taken to secure the maintenance of that house in a proper state of repair during that year.  
[538]

(2) Where a house provided under arrangements made in pursuance of this section is let together with other land at a single rent, such proportion of that rent as the council of the county district may determine shall be deemed, for the purpose of paragraph (b) of subsection (1) of this section, to be the rent at which the house is let.  
[539]

**4. Contributions to be paid out of Exchequer.**—The sums required for the payment of any contribution which the Minister is required or authorised by the preceding sections of this Act to make shall be paid out of moneys provided by Parliament; and any such contribution as aforesaid, not being a contribution payable under the last preceding section, shall be deemed for the purposes of the principal Act to be an Exchequer contribution. [540]

**5. Review of contributions.**—Section one hundred and nine of the principal Act (which provides for a review of certain contributions)

shall have effect subject to the following amendments, that is to say :—

- (a) for subsection (1) of that section there shall be substituted the following subsection :—

“(1) In the year nineteen hundred and forty-one, after the beginning of October in that year, and in each third succeeding year, after the beginning of October in that year, the Minister shall, in connection with contributions which he is required to make under section one or section two, of the Housing (Financial Provisions) Act, 1938, take into consideration the amount of expenses likely to be incurred by local authorities, in the period of three years beginning with the next following first day of April, in connection with operations relevant to the question whether or not contributions are payable under that section, and also the amount of expenses already incurred by local authorities in connection with such operations”; and

- (b) in subsection (3) of that section for the words “nineteen hundred and thirty-seven, be the thirty-first day of March nineteen hundred and thirty-eight” there shall be substituted the words “nineteen hundred and forty-one, be the thirtieth day of September nineteen hundred and forty-two”;

and subsection (2) of that section shall be deemed not to have come into operation until the date of the passing of this Act. [541]

For s. 109 of the principal Act, see 29 Halsbury's Statutes 645.

### *Contributions out of Rates.*

**6. Local authorities' contributions.**—(1) A local authority to whom the Minister has, under section one of this Act, undertaken to make a contribution in respect of any house shall, for each financial year during the period of sixty years from the completion of the house, make out of the general rate fund a contribution of the annual amount, calculated by reference to a period of sixty years, equivalent to half the annual amount of the Minister's contribution payable for a period of forty years :

Provided that, where the annual amount of the contribution which the Minister has so undertaken to make is six pounds ten shillings, the contribution to be made under this subsection by the local authority shall be of the annual amount, calculated as aforesaid, equivalent to two pounds fifteen shillings payable for a period of forty years. [542]

(2) Any council of a county district to whom the Minister has, under section two of this Act, undertaken to make a contribution in respect of any house shall, for each financial year during the period of sixty years from the completion of the house, make out of the general rate fund a contribution of the annual amount, calculated by reference to a period of sixty years, equivalent to one pound a year payable for a period of forty years. [543]

(3) Where a local authority are of opinion that any contribution payable by them under subsection (1) or subsection (2) of this section should be provided by annual instalments during a period of less than sixty years, the Minister may, upon an application made by that local authority, direct that the said subsection (1) or subsection (2), as the

case may be, shall have effect in relation to that contribution as if for any reference in that subsection to a period of sixty years there were substituted a reference to such period, not being less than forty years, as the Minister thinks proper. [544]

(4) It shall be a condition of the right of a local authority to receive any contribution which, for the purposes of the principal Act, is or is to be deemed to be an Exchequer contribution, that the local authority shall make out of the general rate fund the contributions which they are required by section one hundred and fourteen of the principal Act and by this section to make; and in section one hundred and fourteen of the principal Act the words from "and it shall be a condition" to the end of the section shall cease to have effect. [545]

(5) The following provisions of the principal Act, that is to say, section eighty-six, subsection (1) of section one hundred and twenty-nine and subsection (2) of section one hundred and thirty, shall have effect as if any reference in those provisions to the Eighth Schedule to that Act included a reference to this section. [546]

**7. County councils' contributions.**—(1) In respect of each house in respect of which the Minister—

(a) has, under section one of this Act, undertaken to make to the council of any county district payment of an annual contribution of the amount of six pounds ten shillings, or

(b) has, under section two of this Act, undertaken to make to the council of a county district payment of an annual contribution of the amount of ten pounds,

the council of the county of which the county district forms part shall make, for each financial year during the period of forty years from the completion of the house, payment of a contribution of the amount of one pound to the council of the county district. [547]

(2) In respect of each house in respect of which the Minister has, under section two of this Act, undertaken to make to the council of a county district payment of an annual contribution of any amount in excess of ten pounds which is payable by virtue of the proviso to subsection (1) of that section, the council of the county of which the county district forms part shall make, for each financial year during the period of forty years from the completion of the house, payment to the council of the county district of a contribution of the amount of one pound plus a sum equal to the excess. [548]

(3) If, under section one hundred and thirteen of the principal Act as amended by this Act, the amount or the payment of any contribution payable under section two of this Act to the council of a county district is reduced, or, as the case may be, suspended or discontinued, by the Minister on the ground that the council have failed to discharge the duty imposed upon them by the last-mentioned section to reserve housing accommodation for members of the agricultural population, the county council shall not be under any liability to make to the council of the county district, under the preceding provisions of this section, any contribution for any year in respect of which the Minister's contribution is not paid in full. [549]

(4) Subsection (1) of section one hundred and twenty-nine of the principal Act shall have effect as if the reference in paragraph (c) of that

subsection to section one hundred and fifteen of that Act included a reference to this section. [550]

*Amendments as to arrangements between local authorities and other persons.*

**8. Amendment of section ninety-four of the principal Act.**—Subsection (1) of section ninety-four of the principal Act (which enables local authorities to make arrangements with housing associations for the provision of housing accommodation) shall have effect as if for paragraphs (a) to (c) of that subsection there were substituted the following paragraph :—

“(a) to provide any housing accommodation which the local authority are empowered under this Act to provide;”.

[551]

For s. 94 of the principal Act, see 29 Halsbury's Statutes 636.

**9. Continuation of Government contributions in certain cases where houses become vested in local authorities.**—Where, after the commencement of this Act, any house which has, with the assistance of a local authority given under section two of the Housing, &c. Act, 1923, been provided by some person other than a local authority becomes vested in the local authority by reason of any default on the part of that person or his successor in title, then, if at the time of the vesting, the house is a house in respect of which a contribution is payable by the Minister under section one of the said Act, the Minister may continue to make payments by way of that contribution as if the house had been provided by the local authority. [552]

*Transitional and supplementary provisions.*

**10. Transitional provisions.**—(1) No contribution shall, under any of the provisions of sections one hundred and five to one hundred and eight of the principal Act or under subsection (2) or subsection (3) of section one hundred and fifteen of that Act, be payable by the Minister or a county council in respect of any new house completed after the beginning of the year nineteen hundred and thirty-nine. [553]

(2) Any house provided by a local authority, with the approval of the Minister, by way of housing accommodation other than such as is mentioned in paragraph (a) of subsection (5) of section one of this Act, being a house for the erection of which no contract has been entered into by that authority before the third day of February nineteen hundred and thirty-eight, shall be treated for the purposes of this Act as if it were a house completed after the beginning of the year nineteen hundred and thirty-nine, notwithstanding that it was in fact completed before the beginning of that year. [554]

(3) Where, by virtue of the preceding provisions of this section, a contribution which the Minister or a county council would otherwise be required or authorised by the principal Act to make is not payable, any duty or power of the Minister or the council to give an undertaking to make such a contribution shall cease.

Any such undertaking which has been given by the Minister or a county council before the date of the passing of this Act shall, if and so far as it relates to a house in respect of which a contribution becomes payable under section one or section two of this Act by the Minister or the county council, be deemed for the purposes of the principal Act not to have been given; and the obligations to contribute which are imposed on local authorities by section one hundred and fourteen of that Act shall be limited accordingly. [555]

**11. Interpretation, and construction of Act with principal Act.—**

(1) In this Act—

- (a) the expression “the principal Act” means the Housing Act, 1936; and
- (b) subject as hereinafter provided, the expression “block of flats” means a building which contains two or more flats, and which consists of three or more storeys exclusive of any storey constructed for use for purposes other than those of a dwelling;

and (without prejudice to the operation of subsection (3) of section one hundred and eighty-eight of the principal Act) any reference in this Act to a house shall be construed as including a reference to a flat:

Provided that, for the purposes of this Act, a building shall, notwithstanding that it does not in all parts exceed two storeys in height, be deemed to be a building of three storeys, if the Minister is satisfied that the total accommodation provided in that building is not less than the accommodation which could have been provided in a building on the same superficial area if the building had in all parts been of three storeys. [556]

(2) This Act shall be construed as one with the principal Act; and in the principal Act the expression “the Housing Acts” shall, unless the context otherwise requires, be construed as including this Act. [557]

**12. Short title, citation and extent.—**(1) This Act may be cited as the Housing (Financial Provisions) Act, 1938; and the principal Act and this Act may be cited together as the Housing Acts, 1936 and 1938.

(2) This Act shall not extend to Scotland or to Northern Ireland. [558]

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**SCHEDULE.**

Sect. 1 (2).

**PROVISIONS FOR ASCERTAINING THE VALUE OF CERTAIN SITES, AND THE AMOUNT OF GOVERNMENT CONTRIBUTIONS IN RESPECT OF FLATS IN BLOCKS ON SUCH SITES.**

1. The annual amount of any contribution which, by virtue of subsection (2) of section one of this Act, is payable under that section in respect of a flat shall, if the flat is provided in a block of flats on a site of such cost



as is specified in the first column of the following Table, be the corresponding sum specified in the second column of that Table :—

TABLE.

Where the cost per acre of the site as developed—	£	s.	d.
exceeds £1,500 but does not exceed £4,000 — — —	11	0	0
exceeds £4,000 but does not exceed £5,000 — — —	12	0	0
exceeds £5,000 but does not exceed £6,000 — — —	13	0	0
exceeds £6,000 but does not exceed £8,000 — — —	14	0	0
exceeds £8,000 but does not exceed £10,000 — — —	15	0	0
exceeds £10,000 but does not exceed £12,000 — — —	17	0	0
exceeds £12,000 — — —	17	0	0
increased by £1 0s. 0d. for each additional £2,000, or part of £2,000, in the cost per acre of the site as developed :			

Provided that the annual amount of the contribution payable by virtue of this Schedule in respect of any one flat shall not exceed twenty-six pounds.

2. For the purposes of this Act the cost of a site as developed means the cost, or, in the case of a site not purchased by the local authority under any enactment relating to housing, the value as certified by the Minister, of the site, including—

- (a) any such expenses as in the opinion of the Minister are requisite for making the site available for the purpose of the provision of the flats, being expenses incurred by the local authority in the construction or widening of streets, the construction of sewers or the execution of any special works rendered necessary by the physical characteristics of the land, and
- (b) any such expenses incurred in respect of other matters as the Minister, with the consent of the Treasury, may determine to be expenses properly forming part of the cost of making the site available for that purpose.

The amount of the expenses to be included under this paragraph shall be such as may be estimated by the authority and approved by the Minister.

3. In determining the number of acres in a site, any land which is acquired for the purpose of the provision of the flats, and which is used as new street space on which the block of flats will abut, shall be deemed to form part of the site.

4. If the Minister thinks fit so to determine in relation to any two or more buildings, each containing two or more flats, on sites each of which is contiguous with the other or another, as the case may be, or is superficially separated therefrom by a street or public highway only, the several buildings shall, for the purposes of this Schedule, be treated as if they were one building on a single site the cost of which as developed was the sum obtained by adding together the cost of each of the actual sites as developed. [559]

# THE HOUSING (RURAL WORKERS) AMENDMENT ACT, 1938

(1 & 2 Geo. 6, c. 35)

## ARRANGEMENT OF SECTIONS

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*An Act to amend the Housing (Rural Workers) Acts, 1926 and 1931.*  
[560] [23rd June, 1938.]

**1. Extension of time for applying for assistance under s. 2 of 16 & 17 Geo. 5, c. 56.**—(1) Subsection (2) of section two of the Housing (Rural Workers) Act, 1926 (in this Act referred to as “the principal Act”) shall have effect as if the thirtieth day of September nineteen hundred and forty-two were therein substituted for the twenty-fourth day of June nineteen hundred and thirty-eight, and section four of the principal Act (which relates to Government contributions to expenses of local authorities under the principal Act) shall have effect accordingly.  
[561]

(2) Subject to the provisions of any amending scheme made by a local authority with the approval of the Minister, any reference in a scheme under the principal Act to any date, being a reference which is by virtue of subsection (2) of section thirty-seven of the Housing Act, 1935, to be construed as a reference to the twenty-fourth day of June nineteen hundred and thirty-eight, shall be construed as a reference to the thirtieth day of September nineteen hundred and forty-two.  
[562]

For s. 2 of the Housing (Rural Workers) Act, 1926, see 13 Halsbury's Statutes 1163. Under the original section no assistance under the principal Act could be given unless the application therefor were received by the local authority before 1st October, 1931. The date was extended by the Housing (Rural Workers) Amendment Act, 1931 (24 Halsbury's Statutes 370), and by s. 37 of the Housing Act, 1935 (28 Halsbury's Statutes 228), to 24th June, 1938, and is now further extended.

**2. Power to pay lump sum grants in instalments.**—(1) In paragraph (a) of subsection (4) of section two of the principal Act (which specifies the ways in which a grant may be made thereunder), for the words “by way of a lump sum payment to be made after the completion of the works”, there shall be substituted the words “by way of a lump sum payment, to be made either after the completion of the works or

"partly in instalments from time to time as the works progress and as  
 "to the balance after the completion of the works, so however that,  
 "where the payment is to be made partly in instalments, the aggregate  
 "of the instalments paid shall not at any time before the completion  
 "of the works exceed one-half of the aggregate cost of the works  
 "executed up to that time". [563]

(2) In paragraph 3 of the Schedule to the principal Act, after the words "by way of loan", there shall be inserted the words "or by way of grant to be made partly in instalments". [564]

For s. 2 (4) (a) of the principal Act, see 13 Halsbury's Statutes 1164.

**3. Repayments of grant to be proportionate to unexpired part of period for observance of conditions.**—The sums repayable under the principal Act—

- (a) by the owner of a dwelling, to the local authority, by virtue of proviso (ii) to subsection (1) of section three thereof, on any exercise of the option to repay conferred by that proviso; and
- (b) by the local authority to the Minister, by virtue of subsection (4) of section four thereof, on any such exercise of option as aforesaid;

shall, if the option is exercised, after the commencement of this Act, in lieu of being ascertained by reference to the whole amount of a grant paid by the local authority, or of contributions made by the Minister, as the case may be, be ascertained by reference to a part thereof proportionate to the extent to which the relevant period of application of conditions remains unexpired at the time of the exercise of the option. [565]

**4. Amendment of definition of normal agricultural rent.**—In paragraph (b) of subsection (1) of section three of the principal Act (which defines the expression "normal agricultural rent" in relation to the rent payable in respect of a dwelling to which conditions apply by virtue of the principal Act), for the words "average rent for the time being paid by agricultural workers in the district", there shall be substituted the words "rent normally paid by agricultural workers in the district, or, if it appears to the local authority that the number of agricultural workers in the district is insufficient for the determination of any sum as being such rent as aforesaid, the rent normally paid by persons of substantially the same economic condition in the district", and after the words "rent normally paid by agricultural workers in the district", there shall be inserted the words "or, if it appears to the local authority that the number of agricultural workers in the district is insufficient for the determination of any sum as being such rent as aforesaid, than the rent normally paid by persons of substantially the same economic condition in the district" [566]

For s. 3 (1) (b) of the principal Act, see 13 Halsbury's Statutes 1165.

**5. Additional condition as to dwellings in respect of which assistance given by way of grant.**—(1) In the case of a dwelling in respect of which any payment in respect of assistance by way of grant is made under the principal Act after the commencement of this Act, the following condition shall apply in relation to the dwelling for a period of twenty years from the date on which it first becomes fit for occupation after

the completion of the works, in addition to the conditions specified in section three of the principal Act, that is to say, all reasonable steps shall be taken to secure the maintenance of the dwelling so as to be in all respects fit for habitation as a dwelling by persons of the working-classes. [567]

(2) Proviso (ii) to subsection (1) of section three of the principal Act (which relates to the cesser of conditions on repayment of grant), and paragraph (b) of subsection (5) of that section (which relates to the recovery of sums payable by reason of breach of conditions), shall have effect as if the condition aforesaid were contained in, and applicable by virtue of, the said section three. [568]

**6. Amendment of condition as to maximum rent where further assistance given by way of grant.**—Where assistance by way of grant has been given under the principal Act (whether before or after the commencement of this Act) in respect of a dwelling, and subsequently further assistance has been so given in respect of that dwelling, subsection (1) of section three of the principal Act shall have effect with the substitution for the condition specified in paragraph (b) thereof of the following condition, that is to say, the rent payable by the occupier in respect of the dwelling shall not exceed the amount permissible before the execution of the works in respect of which the further assistance was given, increased by a sum equal to the following percentage of the amount by which the estimated cost of those works exceeds the amount of the further assistance, that is to say, if those works were completed before the first day of January nineteen hundred and thirty-five, three per cent. or, if they were completed on or after that day, four per cent., and no fine, premium or other like sum shall be taken in addition to the rent. [569]

**7. Apportionment of rent of dwelling let with other land**—When a dwelling in respect of which assistance has been given under the principal Act (whether before or after the commencement of the Act) is let to an occupier together with other land at a single rent such proportion of that rent as the local authority may determine shall be deemed, for the purposes of paragraph (b) of subsection (1) of section three of the principal Act, to be the rent payable by the occupier in respect of the dwelling. [570]

**8. Amendment as to expenses of county councils.**—In the proviso to subsection (8) of section five of the principal Act, after the words “the expenses of the council of the county under this Act” where those words first occur, there shall be inserted the words “(other than “expenses in connection with assistance given by the county council in “respect of a house or building situated in the county district)”, and after the words “on account of the expenses”, there shall be inserted the words “(other than as aforesaid)”. [571]

For s. 5 (3) of the principal Act, see 13 Halsbury's Statutes 1168.

**9. Power to give increased assistance for abatement of overcrowding.**—(1) Where a dwelling, in respect of which assistance by way of grant was given under the principal Act on an application received by the local authority before the second day of August nineteen hundred and thirty-five, is overcrowded within the meaning of Part IV of the Housing Act, 1936, and an application is made to the local authority

for further assistance in respect of works proposed to be executed in respect of the dwelling for the purpose of the abatement of the overcrowding, the local authority may give further assistance by way of grant in respect of the dwelling in excess of the amount which apart from this section would have been permissible, but in other respects subject to and in accordance with the provisions of the principal Act, so however that the amount of the further assistance shall not exceed two-thirds of the estimated cost of any works proposed to be executed or one hundred pounds, whichever is the less, and that the total amount of all the grants made in respect of the dwelling shall not exceed one hundred and fifty pounds :

Provided that no further assistance shall be given under this section unless the local authority are satisfied that upon the completion of the works the dwelling will cease to be overcrowded as aforesaid. [572]

(2) Any increase attributable to the exercise of the powers conferred by this section in the sum payable out of moneys provided by Parliament by virtue of section four of the principal Act shall be defrayed out of moneys so provided. [573]

#### 10. Special provisions as to Scotland. [574]

11. Additional provisions with respect to loans by local authorities in Scotland. [575]

12. Short title, citation, construction and extent.—(1) This Act may be cited as the Housing (Rural Workers) Amendment Act, 1938.

(2) This Act shall be construed as one with the Housing (Rural Workers) Acts, 1926 and 1931, and, in its application to England, with sections thirty-seven and thirty-eight of the Housing Act, 1935, and, in its application to Scotland, with sections thirty-four and thirty-five of the Housing (Scotland) Act, 1935.

(3) The Housing (Rural Workers) Acts, 1926 and 1931, sections thirty-seven and thirty-eight of the Housing Act, 1935, and this Act may be cited together as the Housing (Rural Workers) Acts, 1926 to 1938, and the Housing (Rural Workers) Acts, 1926 and 1931, sections thirty-four and thirty-five of the Housing (Scotland) Act, 1935, and this Act may be cited together as the Housing (Rural Workers) (Scotland) Acts, 1926 to 1938.

(4) References in this Act to the principal Act shall be construed as references to that Act as amended by any subsequent enactment, including, except where the context otherwise requires, this Act.

(5) This Act shall not apply to Northern Ireland or to the administrative county of London. [576]



## ORDERS, CIRCULARS AND MEMORANDA

### HOUSING ACT, 1936 (OPERATION OF OVERCROWD- ING PROVISIONS) ORDER, 1938

*S. R. & O., 1938, No. 216*

*March 16, 1938*

95487

The Minister of Health, in exercise of his powers under Section 68 of the Housing Act, 1936 (hereinafter referred to as "the Act"), and of all other powers enabling him in that behalf, hereby makes the following Order :—

1. In relation to the areas which are specified in column 1 of the Schedule to this Order the appointed day for the purposes of Section 62 of the Act (which provides for entry in rent books or similar documents of a summary in the prescribed form of certain provisions of the Act relating to overcrowding) shall be the date shown in column 2 of the said Schedule and the appointed day for the purposes of Sections 59 and 64 (which contain provisions as to offences in relation to overcrowding) and Section 60 and subsection (2) of Section 6 of the Act shall be the date shown in column 3 of the said Schedule.

2. This Order may be cited as the Housing Act, 1936 (Operation of Overcrowding Provisions) Order, 1938.

#### SCHEDULE

1 Areas to which this Order applies	2 Appointed day	3 Appointed day
Metropolitan Boroughs of :—		
Bermondsey ... ..	1st April, 1938	1st October, 1938
Bethnal Green ... ..	1st April, 1938	1st October, 1938
Finsbury ... ..	1st October, 1938	1st April, 1939
Islington ... ..	1st April, 1938	1st October, 1938
Poplar ... ..	1st April, 1938	1st October, 1938
Shoreditch ... ..	1st April, 1938	1st October, 1938
Stepney ... ..	1st January, 1939	1st July, 1939

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[577]

### HOUSING ACTS (EQUALISATION ACCOUNT) REGULATIONS, 1938

*S. R. & O., 1938, No. 1281*

*October 3, 1938*

96740

The Minister of Health in exercise of the powers conferred on him by section 176 and section 132 (1) of the Housing Act, 1936, and of

all other powers enabling him in that behalf, hereby makes the following regulations :—

1. These regulations may be cited as the Housing Acts (Equalisation Account) Regulations, 1938.

2.—(1) In these regulations, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them :—

“ The Act of 1923 ” means the Housing, etc. Act, 1923 :

“ The Act of 1924 ” means the Housing (Financial Provisions) Act, 1924 :

“ The Act of 1936 ” means the Housing Act, 1936 :

“ The Act of 1938 ” means the Housing (Financial Provisions) Act, 1938 :

“ The Minister ” means the Minister of Health :

The “ Housing Revenue Account ” and the “ Housing Equalisation Account ” have the same meaning as in the Housing Act, 1936.

(2) The Interpretation Act applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

3. The Housing Acts (Equalisation Account) Regulations, 1936 are hereby revoked, but without prejudice to anything done thereunder or to the continued operation of any direction given by the Minister under section 132 (2) of the Act of 1936.

4. Subject to the provisions of these regulations and of any directions given by the Minister under subsection (2) of section 132 of the Housing Act, 1936, every local authority who are required to keep a Housing Revenue Account shall keep a Housing Equalisation Account and shall in each financial year beginning on the 1st day of April carry to the credit of that account from the Housing Revenue Account the aggregate of the under-mentioned sums, viz. :—

(a) an amount equal to the one-seventh part of the aggregate amount of the Exchequer contributions payable to the authority for that year under :—

(i) paragraph (b) of subsection (1) of section 1 of the Act of 1923, as amended by sections 1 and 2 of the Act of 1924 ;

(ii) Sections 105, 106 and 108 of the Act of 1936 ;

(iii) Sections 1 and 2 of the Act of 1938 ;

(b) an amount equal to the one-seventh part of the aggregate amount of any contributions payable to the authority for that year from a county council under :—

(i) Section 115 of the Act of 1936 ;

(ii) Section 7 of the Act of 1938.

5. If a local authority satisfy the Minister that, having regard to arrangements made by them for repaying money borrowed for expenditure in connexion with the provision of the houses to which the Housing Revenue Account relates, or for any other reason, it is necessary or expedient that the total amount to be carried to the credit of the Housing Equalisation Account in any year under regulation 4 of these regulations should be varied, the amount to be carried to the credit of that account in that year shall be such sum as the Minister may determine to be appropriate in all the circumstances.

6. If a local authority satisfy the Minister that it is necessary or expedient that an amount should be carried in any year from the Housing Revenue Account in respect of contributions payable under paragraph (b) of subsection (1) of section 1 of the Act of 1923 or under section 107 of the Act of 1936 to the credit of the Housing Equalisation Account the amount to be carried to the credit of that account in that year in respect of the said contributions shall be such sum as the Minister may determine to be appropriate.

7. Such sums as the local authority may, with the approval of the Minister, think it necessary or desirable to transfer to the Housing Revenue Account with a view to carrying out the objects of section 132 of the Act of 1936 shall from time to time be transferred from the Housing Equalisation Account accordingly but, subject to the foregoing provision, an amount equal to all moneys standing to the credit of the Housing Equalisation Account shall be applied in manner provided by section 133 of the Act of 1936. [578]

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## HOUSING (FINANCIAL PROVISIONS) ACT, 1938 CIRCULAR, 1704

*May 13, 1938*

SIR,

### HOUSING (FINANCIAL PROVISIONS) ACT, 1938

I am directed by the Minister of Health to enclose for the information of the County Council two copies of circulars and a memorandum which he has addressed to the local authorities whose housing operations will be affected by the provisions of the above-mentioned Act.

The principal effect of the Act is to prescribe the Exchequer and rate contributions payable for the different purposes of the Housing Acts of 1930 and 1935 in respect of houses completed between the beginning of the year 1939 and the 30th September, 1942, and it makes no alterations in the general housing law as affecting either county councils or other local authorities. It will be observed, however, that the Act establishes special rates of Exchequer subsidy for houses built for the agricultural population, not only for the purposes of slum clearance and the abatement of overcrowding, but also for general needs. It will also be observed that by Section 7 certain liabilities in extension of those imposed by previous Acts are laid upon county councils to contribute towards the provision of houses by local authorities.

In so far, however, as such extensions are concerned, the Act provides by Section 1 (3) and (4) and the proviso to Section 2 (1) that the Minister must consult with the County Council before assenting to applications by local authorities the effect of which would be to involve the County Council in liability. In this connection I am to refer to what is said in paragraphs 7 and 10 of the memorandum.

Until any such applications are made the Act requires no special action on the part of county councils, but the Minister is confident

that he can rely on their co-operation in securing that proper advantage is taken by the authorities of county districts of the facilities afforded by the Act.

I am, Sir,

[579]

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## CASES

*Clearance Area—Compulsory Purchase Order—Whether Local Authority Entitled to Proceed by Compulsory Purchase Rather than by Demolition—Housing Act, 1936 (c. 51), ss. 25, 29 (1), Sched. I.*

Applicants were the owners of a site which admittedly could properly be declared to be a clearance area. They had for some time been in communication with the local authority upon the question of the demolition of the property and the redevelopment of the site. The local authority without further notice to applicants declared the area to be a clearance area, and on the same day made a compulsory purchase order in respect of the property, which order was confirmed by the Minister, after an inquiry had been held :—

*Held*: (1) any injury to applicants was caused solely by the act of compulsory purchase, and this was an act which the local authority were specifically authorised by the statute to perform ;

(ii) when the Minister confirmed the order, there were no objections before him which could properly have been taken under the statute. There was, therefore, no *lis* between the parties, and the Minister acted, and was entitled to act, ministerially, and not *quasi-judicially* ;

(iii) it is a matter for the discretion of a local authority whether they choose to proceed by means of a clearance order or by means of a demolition order.

Decision of DU PARCQ, J. ([1938] 2 All E. R. 146), affirmed.—*RE BRIGHTON (EVERTON PLACE AREA) HOUSING ORDER, 1937, E. ROBINS & SON, LTD.'S APPLICATION*, [1938] 4 All E. R. 446 ; 55 T. L. R. 134 ; 82 Sol. Jo. 988, C. A. [580]

*Clearance Order—"Other Buildings"—Inclusion in Order of Garages and Workshops—Housing Act, 1936 (c. 51), Sched. III., para. 2.*

W. Mews was a *cui de sac* upon the three sides of which there were buildings of two storeys, on the ground floor being garages and workshops and on the upper floor being dwellings. The vertical division between the upper storeys and the lower storeys was not the same in all cases, there were separate entrances in every case, and each floor was separately occupied. There was no finding of fact that each such composite structure was a house. The local authority made a clearance order in respect of both the dwellings on the first floor and the garages and workshops beneath. A mortgagee of the property contended that there was no power to make an order in respect of the garages and workshops :—

*Held*: the order was rightly made, and the garages and workshops were properly included in the order. They were "other buildings" within the meaning of those words in the Housing Act, 1936, Sched. III., para. 2, and, having regard to the proviso to that paragraph, were

rightly included in the order.—*RE CAMBERWELL (WINGFIELD MEWS) NO. 2 CLEARANCE ORDER, 1936, BUTLER'S APPLICATION, [1938] 2 K. B. 210; [1938] 2 All E. R. 279; 107 L. J. K. B. 419; 102 J. P. 243; 54 T. L. R. 655; 82 Sol. Jo. 317; sub nom. Butler v. Minister of Health, 159 L. T. 47; 36 L. G. R. 335.*

Decision of DU PARCQ, J., affirmed, though on grounds that whole premises were a "house".—[1939] 1 K. B. 570; [1939] 1 All E. R. 590; 108 L. J. K. B. 487; 103 J. P. 143; 55 T. L. R. 429; 83 Sol. Jo. 256; W. N. 71, C. A.; *sub nom. Butler v. Minister of Health*, 160 L. T. 255; 37 L. G. R. 315. [581]

*Housing—Demolition Order—House Suitable for Occupation by Persons of the Working Classes—Whether "house" Can Include Ten Acres of Grassland—Housing Act, 1936 (c. 51), s. 188.*

A local authority made a demolition order in respect of a house, which was usually let together with cow-stalls, farm-buildings, and about 10 acres of grassland. The county court judge, in considering whether the house was one suitable for occupation by persons of the working classes, held that he was entitled to treat the 10 acres as appurtenant to the house:—

*Held*: the word "appurtenances" in the definition of "house" contained in the Housing Act, 1936, s. 188, must be given its natural meaning, and cannot be extended to cover land outside the curtilage of the house.—*TRIM v. STURMINSTER RURAL DISTRICT COUNCIL, [1938] 2 K. B. 508; [1938] 2 All E. R. 168; 107 L. J. K. B. 687; 159 L. T. 7; 102 J. P. 249; 54 T. L. R. 597; 82 Sol. Jo. 313; 36 L. G. R. 319, C. A.*

See also as to "park, garden, or pleasure ground, etc.," *Re Ripon (Highfield) Housing Order, 1938, Applications of White and Collins, [1939] 3 All E. R. 548. [582]*

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## HOUSING SUBSIDIES

*See HOUSING.*

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## HYDRANTS

*See FIRE PROTECTION.*

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## ICE CREAM

*See FOOD AND DRUGS.*

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## IMPORTED FOOD

*See FOOD AND DRUGS.*

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# INFANTS, CHILDREN AND YOUNG PERSONS

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## STATUTES

### THE YOUNG PERSONS (EMPLOYMENT) ACT, 1938

(1 & 2 Geo. 6, c. 69.)

*An Act to regulate the hours of employment of persons under the age of eighteen years employed in certain occupations ; to amend the Shops Act, 1934, with respect to the regulation of the hours of employment of persons under the age of sixteen years, and with respect to the determination of the number of working hours of persons under the age of eighteen years ; and for purposes connected with the matters aforesaid.*  
 [583] [29th July, 1938.]

## PART I.

### EMPLOYMENT OF PERSONS UNDER THE AGE OF EIGHTEEN YEARS.

#### *Hours and Holidays.*

**1. Conditions of employment.**—(1) The total number of hours worked by a young person to whom this Part of this Act applies, exclusive of intervals allowed for meals and rest, shall,—

- (a) in the case of a person who has attained the age of sixteen years, not exceed forty-eight in any week ;
- (b) in the case of a person who has not attained the age of sixteen years, not exceed, during one year from the commencement of this Act, forty-eight in any week, and thereafter, forty-four in any week :

Provided that a person who has attained the age of sixteen years may, on occasions of seasonal or other special pressure or in cases of emergency, work overtime, that is to say, in excess of the permitted weekly hours, so, however, that the number of hours overtime that may be worked by that person shall not exceed six in any week or fifty in any year, and where in any year, in connection with a business carried on at any premises, overtime employment of any young persons to whom

this Part of this Act applies under an employer has taken place in twelve weeks (whether consecutive or not), no further overtime employment of any such persons under that employer or under any person succeeding to his business shall, during the remainder of that year, take place in connection with the business carried on at those premises. [584]

As to young persons to whom this Part of this Act applies, see s. 7, *post*.  
This Act commenced on January 1, 1939; see s. 14 (3), *post*.

(2) A young person to whom this Part of this Act applies shall not be employed continuously for more than five hours without an interval of at least half an hour for a meal or rest, and where the hours of employment include the hours from half-past eleven in the morning to half-past two in the afternoon, an interval of not less than three-quarters of an hour shall be allowed between those hours for dinner. [585]

(3) On at least one weekday in each week, to be notified in the prescribed form and manner, a young person to whom this Part of this Act applies shall not be employed after one o'clock in the afternoon. [586]

(4) A young person to whom this Part of this Act applies shall, in every period of twenty-four hours between midday on one day and midday on the next day, be allowed an interval of at least eleven consecutive hours which shall include the hours from ten o'clock in the evening until six o'clock in the morning. [587]

(5) A young person to whom this Part of this Act applies shall not be employed on a Sunday unless he receives in respect of his employment on that Sunday a whole holiday on a weekday either in the week beginning with that Sunday or in the previous week, being a weekday other than that on which under subsection (3) of this section he is not to be employed after one o'clock in the afternoon. [588]

(6) The Secretary of State may by regulations prescribe further conditions for the purpose of safeguarding the welfare and interests of young persons to whom this Part of this Act applies or any class of them, including, if he thinks fit, conditions with respect to the daily period of employment of those persons, and no such person shall be employed otherwise than in accordance with those conditions. [589]

(7) The Secretary of State may by regulations increase, as respects any class or description of business, the number of hours overtime that may be worked in any week by a young person to whom this Part of this Act applies, or the number of weeks in any year in which overtime employment can take place in connection with a business carried on at any premises under an employer or any person succeeding to his business, if he is satisfied that owing to the exigencies of businesses of that class or description the increase is necessary. [590]

(8) In the case of any contravention of, or failure to comply with, the foregoing provisions of this section, the employer shall be liable on summary conviction to a fine not exceeding ten pounds. [591]

(9) Any regulations made under this section may contain such supplemental and consequential provisions as the Secretary of State considers requisite for giving full effect to the regulations, and shall be laid before Parliament as soon as may be after they are made, and if either House of Parliament within the next subsequent twenty-eight days on which that House has sat after any such regulations have been laid before it resolves that the regulations shall be annulled, the

regulations shall forthwith be void, but without prejudice to the validity of anything previously done thereunder or to the making of new regulations. [592]

**2. Records and notices.**—(1) The employer of any young persons to whom this Part of this Act applies shall, in the prescribed form and in the prescribed manner, keep a record of the prescribed particulars as to those persons, including particulars of the hours worked by them, and of the intervals allowed for rest and meals to them; and particulars of all employment overtime shall be separately entered on the record. [593]

As to young persons to whom this Part of this Act applies, see s. 7, *post*.

(2) The employer of any young persons to whom this Part of this Act applies shall, in the prescribed form and in the prescribed manner, keep exhibited on the premises a notice setting forth the number of hours in the week during which those persons may, in accordance with the provisions of this Part of this Act, be employed, and such other particulars as may be prescribed. [594]

(3) In the case of any contravention of, or failure to comply with, the foregoing provisions of this section, the employer shall be liable on summary conviction to a fine not exceeding five pounds for every day on which the contravention or failure to comply occurs or continues. [595]

(4) If any person with intent to deceive makes, or causes or allows to be made, in any such record or notice as aforesaid an entry which is to his knowledge false in any material particular, or wilfully omits or causes or allows to be omitted from any such record or notice an entry required to be made therein, he shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding twenty pounds, or to both such imprisonment and fine. [596]

#### *Supplementary.*

**3. Enforcement.**—(1) It shall be the duty of the local authority to enforce within its area the provisions of this Part of this Act, and for that purpose to institute and carry on such proceedings in respect of contraventions of, or failures to comply with, those provisions as may be necessary to secure the observance thereof, and to appoint inspectors; and an inspector so appointed shall for the purposes of his powers and duties have in relation to any premises in connection with a business carried on at which young persons to whom this Part of this Act applies are employed all the powers conferred on inspectors in relation to factories by section one hundred and twenty-three of the Factories Act, 1937, and that section and section one hundred and twenty-five of that Act shall have effect accordingly; and an inspector may, if so authorised by the local authority, institute and carry on any proceedings on behalf of the local authority:

Provided that, for the purpose of the enforcement of the provisions of this Part of this Act in their application to young persons employed as mentioned in the two following subsections, the provisions of those subsections respectively shall have effect to the exclusion of the provisions of this subsection. [597]

As to young persons to whom this Part of this Act applies, see s. 7, *post*.  
For the Factories Act, 1937, ss. 123, 125, see 30 Halsbury's Statutes 284, 285.

(2) An inspector appointed under the Factories Act, 1937, shall have the same powers and duties for the purpose of the enforcement of the provisions of this Part of this Act in their application to young persons employed by a railway company elsewhere than at a residential hotel, or employed in the employment mentioned in paragraph (d) or (h) of subsection (1) of section seven of this Act, as he would have if those provisions were provisions of that Act, and as if the premises in connection with the business carried on at which those persons are employed were a factory. [598]

For the Factories Act, 1937, see 30 Halsbury's Statutes 201.

(3) Inspectors appointed under the Coal Mines Act, 1911, and the Metalliferous Mines Regulation Act, 1872, respectively, shall have the same powers and duties for the purpose of the enforcement of the provisions of this Part of this Act in their application to young persons employed in or in connection with a coal mine, or metalliferous mine or quarry, as the case may be, as they would have if those provisions were provisions of those Acts respectively. [599]

For the Coal Mines Act, 1911, and the Metalliferous Mines Regulation Act, 1872, see 12 Halsbury's Statutes 82, 19 respectively.

**4. Provisions as to offences.**—Sections one hundred and thirty-six, one hundred and thirty-seven, one hundred and forty except subsections (3), (4) and (6) thereof, one hundred and forty-one and subsection (2) of section one hundred and forty-two of the Factories Act, 1937 (which relate to offences against and proceedings under that Act), and section one hundred and forty-four of that Act (which relates to the service and sending of documents), shall apply with respect to the provisions of this Part of this Act as they apply with respect to the provisions of that Act, and accordingly in the application of the said sections with respect to the provisions of this Part of this Act, references therein to factories shall be deemed to include references to premises in connection with a business carried on at which young persons to whom this Part of this Act applies are employed, and references to the occupier or owner of a factory shall be deemed to include references to the employer of those persons. [600]

For the Factories Act, 1937, ss. 136, 137, 140, 141, 142 (2), 144, see 30 Halsbury's Statutes 291—293.

As to young persons to whom this Part of this Act applies, see s. 7, *infra*.

**5. Provisions as to birth certificates.**—Where the age of any person is required to be ascertained or proved for the purposes of this Part of this Act, any person shall, on presenting a written requisition in such form and containing such particulars as may be from time to time prescribed by the Registrar-General and on payment of a fee of sixpence, be entitled to obtain a certified copy under the hand of a registrar or superintendent registrar of the entry in the register under the Births and Deaths Registration Acts, 1836 to 1929, of the birth of that person; and such a form of requisition shall on request be supplied without charge by every registrar or superintendent registrar of births, deaths and marriages. [601]

For the Births and Deaths Registration Acts, 1836—1929, see 15 Halsbury's Statutes 700 *et seq.*

**6. Provisions as to local authorities.**—(1) The local authority for the purposes of this Part of this Act shall be—

(a) as respects the City of London, the Common Council;

(b) as respects any municipal borough, the council of the borough;

- (c) as respects any urban district with a population according to the last published census of twenty thousand or more, the district council ;
- (d) elsewhere, the council of the county. [602]
- (2) The expenses under this Part of this Act of the Common Council of the City of London shall be defrayed out of the general rate. [603]
- (3) The expenses under this Part of this Act of the council of a county shall be defrayed as expenses for special county purposes. [604]

**7. Young persons to whom Act applies.**—(1) Except as provided by subsection (3) of this section, this Part of this Act shall apply to a young person employed by an employer in any of the following employments, where his employment by that employer is wholly or mainly in that employment or in two or more of those employments taken together, that is to say :—

- (a) employment in the collection or delivery of goods, or in any carrying, loading or unloading of goods incidental to the collection or delivery thereof ;
  - (b) employment in connection with a business carried on at any premises in carrying messages or running errands, being employment wholly or mainly outside the premises ;
  - (c) employment at a residential hotel or club in carrying messages or running errands, or in connection with the reception of guests or members thereat ;
  - (d) employment in connection with the business carried on at any premises where a newspaper is published, in carrying messages or running errands ;
  - (e) employment at a place of public entertainment or amusement, or at a public swimming bath, bathing place or turkish bath, in carrying messages or running errands, or in the reception of or attendance upon persons resorting thereto ;
  - (f) employment elsewhere than in a private dwelling-house, in the operation of a hoist or lift connected with mechanical power ;
  - (g) employment in, or in connection with, the operation of cinematograph apparatus ;
  - (h) employment at any premises occupied for the purposes of the business of a laundry, dyeing or cleaning works or other factory, in receiving or despatching goods. [605]
- (2) Except as provided by the next following subsection, this Part of this Act shall apply to a young person employed by an employer in any of the employments mentioned in the foregoing subsection, and, at a residential hotel or in or about a theatre, in connection with a retail trade or business carried on therein, where his employment by that employer is wholly or mainly in those employments taken together. [606]

(3) Nothing in this Part of this Act shall apply—

- (a) with respect to the employment of a young person whose hours of employment are regulated by or under the Factories Act, 1937, the Coal Mines Act, 1911, and the Acts amending that Act, the Metalliferous Mines Regulation Acts, 1872 and 1875, or (except in the case of a young



person to whom this Part of this Act applies by virtue of an election made under subsection (1) of the next following section) the Shops Acts ;

- (b) with respect to the employment of any young person in or in connection with agriculture or in a ship. [607]

For the Factories Act, 1937, see 30 Halsbury's Statutes 201 ; for the Coal Mines Act, 1911, see 12 Halsbury's Statutes 82 ; for the Metalliferous Mines Regulation Acts, 1872 and 1875, see 12 Halsbury's Statutes 19, 39 ; and for the Shops Acts, see the Shops Acts, 1912, 1913, 1928, 1934, and 1936 (8 Halsbury's Statutes 613, 628, 647 ; 27 Halsbury's Statutes 226 ; and 29 Halsbury's Statutes 149, 152).

### 8. Option to apply either this Act or the Shops Acts in certain cases.—

(1) An employer who employs young persons at, or in connection with the business carried on at, a residential hotel, a place of public entertainment or amusement, or a public swimming bath, bathing place or turkish bath, being young persons to whom apart from this section the provisions of this Part of this Act would apply or the provisions of the Shops Acts would apply, may give notice that he elects that the provisions of this Part of this Act shall apply to all such young persons as aforesaid for the time being so employed by him as aforesaid or may give notice that he elects that the provisions of the Shops Acts shall apply to all of them. [608]

The Shops Acts are the Shops Acts, 1912, 1913, 1928, 1934, and 1936 ; see 8 Halsbury's Statutes 613, 628, 647 ; 27 Halsbury's Statutes 226 ; and 29 Halsbury's Statutes 149, 152.

As to young persons to whom this Part of this Act would apply, see s. 7, *ante*. As to young persons to whom the Shops Acts would apply, see the Shops Act, 1934 (27 Halsbury's Statutes 226). See, also, the note to s. 1 (1) of that Act (*ibid*).

(2) When a notice given under the foregoing subsection has taken effect, then, until another notice withdrawing that notice takes effect, the provisions of this Part of this Act or of the Shops Acts, as the case may be, shall apply to all the young persons aforesaid, and, in the case of young persons to whom apart from this section those provisions would not have applied, shall apply to them subject to the prescribed adaptations and to the exclusion of the provisions of the Shops Acts or of this Part of this Act, as the case may be :

Provided that, where the provisions that are to apply are the provisions of the Shops Acts,—

- (a) those provisions shall have effect with the substitution in subsection (5) of section nine of the Shops Act, 1934, and in section one of the Shops Act, 1912, for references to half-past one o'clock of references to one o'clock ; and
- (b) section five of the Shops Act, 1934, shall have effect only in the case of young persons employed at, or in connection with the business carried on at, a residential hotel, and in the case of those persons shall have effect notwithstanding anything in subsection (6) of that section (which enacts that the provisions of the Shops Act, 1934, shall not apply to any person employed in a residential hotel who is not such a shop assistant as is therein mentioned). [609]

As to " the Shops Acts," see note to sub-s. (1), *supra*.

For the Shops Act, 1934, ss. 5, 9 (5), see 27 Halsbury's Statutes 229, 234 ; and for the Shops Act, 1912, s. 1, see 8 Halsbury's Statutes 613.

(3) A notice to be given under subsection (1) of this section, and a notice withdrawing such a notice, shall be given to the local authority in such form, in such manner and subject to such conditions as may be

prescribed, and any such notice shall have effect as from such date after it is given as may be prescribed. [610]

**9. Interpretation of Part I.**—(1) In this Part of this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say :—

“agriculture” has the same meaning as in the Agricultural Wages (Regulation) Act, 1924 ;

“premises” means premises occupied by the employer of a young person to whom this Act applies for the purposes of the business in connection with which that person is employed, and includes the site of any building operation or work of engineering construction, and “building operation”, “work of engineering construction” and “factory” have the same meaning as in the Factories Act, 1937 ;

“prescribed” means prescribed by order of the Secretary of State ;  
“residential hotel”, “retail trade or business”, “theatre”, “week” and “year” have the same meaning as in the Shops Act, 1934 ;

“ship” means a ship or boat registered in the United Kingdom as a British ship, or a British fishing-boat entered in the fishing-boat register ;

“young person” does not include a child whose employment is regulated by section eighteen of the Children and Young Persons Act, 1933, but save as aforesaid means a person who has not attained the age of eighteen years. [611]

For the meaning of “agriculture” in the Agricultural Wages (Regulation) Act, 1924, see s. 16 of that Act (1 Halsbury's Statutes 134).

For the meanings of “building operation,” “work of engineering construction,” and “factory” in the Factories Act, 1937, see ss. 151, 152 of that Act (30 Halsbury's Statutes 295—299).

For the meanings of “residential hotel,” “theatre,” and “year” in the Shops Act, 1934, see s. 15 of that Act (27 Halsbury's Statutes 238) ; and for the meanings of “retail trade or business” and “week,” see the Shops Act, 1912, s. 19 (8 Halsbury's Statutes 624).

For the registration of British ships, see 30 Halsbury (2nd Edn.) 177—184 ; the fishing-boat register 15 Halsbury (2nd Edn.) 113, 114.

For the Children and Young Persons Act, 1933, s. 18, see 26 Halsbury's Statutes 181.

(2) Where a young person who is employed as mentioned in subsection (1) or (2) of section seven of this Act is also employed by the same employer in any other employment (not being employment mentioned in subsection (3) of that section), any reference in section one or two of this Act to employment or to hours worked shall, in relation to that young person, include a reference to that other employment and to hours worked therein. [612]

(3) For the purposes of this Part of this Act, the carrying on of a club shall be deemed to be a business notwithstanding that the club is not carried on for the purpose of profit. [613]

(4) For the purposes of this Part of this Act, a young person shall be deemed to be employed by the person for whom he works, notwithstanding that he receives no wages for his work. [614]

(5) For the purposes of this Part of this Act, employment shall be deemed to be continuous unless interrupted by an interval of at least half an hour. [615]

(6) Where a young person to whom this Part of this Act applies, who in any week is employed in connection with a business carried on at any premises and in that week is employed by the same employer in

connection with a business carried on at other premises, works overtime, the overtime employment of that person shall be deemed to have taken place at the premises in connection with the business carried on at which he was mainly employed. [616]

(7) References in this Part of this Act to any enactment shall, except where the context otherwise requires, be construed as references to that enactment as amended by any subsequent enactment including this Act. [617]

(8) An order under this Part of this Act may be varied or revoked by a subsequent order. [618]

#### 10. Application of Part I to Scotland. [619]

[For Part II of this Act (ss. 11-18), see title SHOPS, post, p. 378.]

#### 14. Short title, interpretation, citation, commencement and extent.—

(1) This Act may be cited as the Young Persons (Employment) Act, 1938.

(2) In this Act, the expression "the Shops Acts" means the Shops Acts, 1912 to 1936, and those Acts and Part II of this Act may be cited together as the Shops Acts, 1912 to 1938.

(3) This Act shall come into operation on the first day of January nineteen hundred and thirty-nine.

(4) This Act shall not extend to Northern Ireland. [620]

As to "the Shops Acts," see note to s. 8 (1), ante.

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## ORDERS, CIRCULARS AND MEMORANDA

### CHILDREN AND YOUNG PERSONS (CONTRIBUTIONS BY LOCAL AUTHORITIES) REGULATIONS, 1938

S. R. & O., 1938, No. 5

January 1, 1938

1. In pursuance of the powers conferred upon me by section 90 of the Children and Young Persons Act, 1933, I, the Right Honourable Sir Samuel Hoare, Baronet, one of His Majesty's Principal Secretaries of State, hereby prescribe contributions at the rate of fifteen shillings a week as the contributions to be made by the local authority named in an approved school order to the expenses of the managers of an approved school throughout the time during which the person to whom the order relates is under the care of the said managers and not out on licence or under supervision.

2. These Regulations shall not apply to a local authority named in an approved school order where the managers having under their care the person to whom the order relates are the local authority, whether as local education authority for elementary education or otherwise, or are a joint committee upon which the local authority, whether as local education authority for elementary education or otherwise, are represented.

3. The Interpretation Act, 1889, shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

4.—(1) These Regulations may be cited as the Children and Young Persons (Contributions by Local Authorities) Regulations, 1938.

(ii) These Regulations shall come into force on the 1st April, 1938.

(iii) The Children and Young Persons (Contributions by Local Authorities) Regulations, 1933, are hereby revoked. [621]

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### JUVENILE COURTS (ASSIGNMENT) RULES, 1938

*S. R. & O.*, 1938, No.  $\frac{230}{L. 4}$

March 12, 1938

1. These Rules may be cited as the Juvenile Courts (Assignment) Rules, 1938.

2. These Rules shall come into operation on the first day of May, 1938.

3. The hearing of any complaint under section forty-four or section forty-five of the Education Act, 1921 (which sections relate to the make of school attendance orders and to the proceedings to be taken where such orders are disobeyed), or under section fifty-four of that Act (which section relates to the making of orders requiring defective or epileptic children to be sent to suitable classes or schools) is hereby assigned to a juvenile court :

Provided that any complaint made before the first day of May, 1938, may be heard as if these Rules had not been made.

4. The Interpretation Act, 1889, shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament. [622]

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### JUVENILE COURTS (METROPOLITAN POLICE COURT AREA) ORDER, 1938

*S. R. & O.*, 1938, No.  $\frac{614}{L. 13}$

June 23, 1938

At the Court at Buckingham Palace, the 23rd day of June, 1938.

PRESENT,

The King's Most Excellent Majesty in Council.

Whereas by the Children and Young Persons Act, 1933 (hereinafter called "the Act"), it is, amongst other things, enacted that His Majesty may by Order in Council specify as respects the metropolitan police

court area the places (which notwithstanding anything in the Metropolitan Police Courts Acts, 1839 and 1840, may be places other than police courts) in which juvenile courts are to sit, and assign as a division to each such place such portion of that area as may be specified in the Order, and direct the manner in which for the purposes of the constitution of a juvenile court in that area two justices of the peace for the county of London shall be selected from a panel of such justices nominated from time to time by the Secretary of State :

And whereas by the Act it is further enacted that any such Order in Council may contain such supplemental, incidental and consequential provisions as appear to His Majesty in Council to be necessary or proper for the purposes of the Order and may be revoked or varied by a subsequent Order :

And whereas in pursuance of the Act His late Majesty King George the Fifth in Council was pleased to make Orders on the fifth day of October, 1934, and on the fifteenth day of July, 1935, and His former Majesty King Edward the Eighth in Council was pleased to make Orders on the third day of March, 1936, and the twenty-fourth day of March, 1936 :

Now, therefore, His Majesty is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows :—

1. Juvenile courts for the metropolitan police court area shall sit in the places specified in the first column of the Schedule hereto and the division assigned to each place shall be that portion of the said area which is specified in the second column of the Schedule :

Provided that a juvenile court may sit at any time in case of emergency in a magistrate's room at Bow Street Police Court for the purpose of hearing cases arising in any part of the metropolitan police court area.

2. Juvenile courts sitting at the places specified in the first column of the Schedule hereto shall be held on the days and at the hours specified in the third column of the Schedule or on such other days and at such other hours as may from time to time be approved by the Secretary of State ;

Provided that—

(i) a juvenile court which would in pursuance of the foregoing provision be held on a day when the metropolitan police courts are closed may be held on the preceding day ; and

(ii) a juvenile court may hold additional sittings at such times as may be necessary for the business of the court.

3. The justices of the peace for the county of London who are to sit at the several sittings of the juvenile courts shall be selected by the panel of justices nominated by the Secretary of State and by the metropolitan police magistrates nominated by the Secretary of State to act as Chairman of juvenile courts within the metropolitan police court area.

4.—(1) This Order may be cited as the Juvenile Courts (Metropolitan Police Court Area) Order, 1938, and shall come into force on the first day of July, 1938.

(2) The Orders in Council made in pursuance of the Act on the fifth day of October, 1934, the fifteenth day of July, 1935, the third day of March, 1936, and twenty-fourth day of March, 1936, are hereby revoked.



## SCHEDULE

Place.	Divisions.	Days and Hours.
Toynbee Hall, 28, Commercial Street, E.1.	The divisions for the time being assigned to the Old Street and Thames Police Courts.	Tuesday, 10 a.m.
Woolwich Town Hall, S.E.18.	The division for the time being assigned to the Woolwich Police Court.	Tuesday, 10 a.m.
Caxton Hall, Westminster, S.W.1.	The divisions for the time being assigned to the Bow Street, Marlborough Street and Westminster Police Courts.	Wednesday, 10 a.m.
Stamford House, 206A, Goldhawk Road, Shepherd's Bush, W.12.	The divisions for the time being assigned to the West London and Marylebone Police Courts.	Thursday, 10 a.m.
Islington Town Hall, Upper Street, Islington, N.1.	The divisions for the time being assigned to the Clerkenwell and North London Police Courts.	Thursday, 10 a.m.
Southwark Juvenile Court, 95, New Church Road, S.E.5.	The divisions for the time being assigned to the Tower Bridge and Greenwich Police Courts.	Friday, 10 a.m.
Springfield Hall, 200, Wandsworth Road, S.W.8.	The divisions for the time being assigned to the Lambeth and South-Western Police Courts.	Friday, 10 a.m.

[628]

## SUMMARY JURISDICTION (CHILDREN AND YOUNG PERSONS) RULES, 1938

*S. R. & O.*, 1938, No. 1201  
L. 21

*September 22, 1938*

1. These Rules may be cited as the Summary Jurisdiction (Children and Young Persons) Rules, 1938.

2. These Rules shall come into operation on the twentieth day of October, 1938.

3. In Rule 14 of the Summary Jurisdiction (Children and Young Persons) Rules, 1938, after the words "or section 66" there shall be inserted the words "or section 84 (6), (7) or (8)".

4. In Rule 15 of the said Rules after the words "and 63" there shall be inserted the words "or section 66 or section 84 (6), (7) or (8)", and after the words "section 34 of the Act" there shall be inserted the words "unless he is himself the parent or guardian".

5. The following Rule shall be inserted after Rule 20 of the said Rules:—

20A. Where a child who is brought before the court appears to the court to be under the age of five years, the court may direct that the child need not attend at any adjourned hearing of the application unless or until required by the court so to do.

## 6. In Rule 24 of the said Rules—

- (a) after the words “section 66 (1) of the Act” there shall be inserted the words “or upon an application under section 84 (6), (7) or (8) of the Act”;
- (b) after the words “sections 61, 62 and 63 of the Act” there shall be inserted the words “except in a case in which the parent or guardian is the applicant”; and
- (c) for the words “the said section” there shall be substituted the words “either of the said sections”.

## 7. The following Rule shall be substituted for Rule 25 of the said Rules :—

25. Such part of the register required by section 22 of the Summary Jurisdiction Act, 1879, to be kept by the clerk of the court as relates to the proceedings of the juvenile court shall be kept in a separate book, and may, so far as form number 47 in the Schedule hereto is applicable, be kept in that form so however that in the case of complaints under section 44, 45 or 54 of the Education Act, 1921, the name of the parent or guardian shall be entered in column 3 in addition to the name of the child.

## 8. In Rule 26 of the said Rules for the words “section 64 of the Act” there shall be substituted the words “section 64 or 84 (6) or (7) of the Act or section 45 of the Education Act, 1921”.

9.—(1) Where in proceedings under section 45 of the Education Act, 1921, the court is satisfied that a school attendance order has not been complied with without reasonable excuse and that a *prima facie* case exists for an order to be made with respect to the child or young person to whom the proceedings relate—

- (i) the court shall inform the child or young person (if present) of the nature of the proceedings and tell him that he may give evidence or make a statement and call witnesses;
- (ii) the court shall obtain such information as to the general conduct, home surroundings, school record and medical history of the child or young person as may enable it to deal with the case in his best interests, and shall, if such information is not fully available, consider the desirability of adjourning the case for such inquiry as may be necessary or of making an interim order under section 3 (2) of the Children and Young Persons Act, 1938;
- (iii) the court shall take into consideration any report which may be furnished by a probation officer or local authority;
- (iv) any written report of a probation officer, local authority or registered medical practitioner may be received and considered by the court without being read aloud:

Provided that—

- (a) the child or young person (if present) shall be told the substance of any part of the report bearing on his character or conduct which the court considers to be material to the manner in which he should be dealt with;
- (b) the parent (if present) shall be told the substance of any part of the report which the court considers to

be material as aforesaid and which has reference to his character or conduct, or the character, conduct, home surroundings or health of the child or young person ;

(c) if the child or young person or his parent, having been told the substance of any part of such report, desires to produce evidence with reference thereto, the court, if it thinks the evidence material, shall adjourn the proceedings for the production of further evidence and shall, if necessary, require the attendance at the adjourned hearing of the person who made the report ; and

(v) before making an order with respect to the child or young person the court shall, unless it thinks it undesirable to do so, inform his parent (if present) of the manner in which it proposes to deal with the child or young person and allow his parent to make representations.

(2) In this Rule the expression " parent " in relation to a child or young person includes guardian and every person who is liable to maintain or has the actual custody of the child or young person.

10. The Interpretation Act, 1889, shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

11.—(1) Forms number 36, 37 and 39 in the Schedule hereto shall be substituted for forms number 36, 37 and 39 in the Schedule to the Summary Jurisdiction (Children and Young Persons) Rules, 1933, respectively.

(2) Forms number 5A, 9A and 9B, 30A, 38A and 38B, 39A and 45A in the Schedule hereto shall be inserted after forms number 5, 9, 30, 38, 39 and 45 in the Schedule to the said Rules respectively.

\* \* \* \* \*

## SCHEDULE OF FORMS

- 5A Authority to bring child before court : Education cases.
- 9A Interim Order to place of safety : Child under five.
- 9B Further Interim Order to place of safety.
- 30A Fit person : committal to : application by parent or guardian : refractory child or young person.
- 36 Supervision Order : care or protection.
- 37 Supervision Order : application by parent or guardian.
- 38A Supervision Order : after fit person order.
- 38B Supervision Order : Education cases.
- 39 Supervision Order : notice to child or young person.
- 39A Order varying or revoking supervision order.
- 45A Notice to Secretary of State of supervision order requiring residence in institution.

## 5A

*Authority to bring child before Court : Education cases*

In the [County] of . [Petty Sessional  
Division of .]

Before the Juvenile Court sitting at the .

To C.D., of .

Complaint has been made on the 19

by  
an officer of the  
appointed in pursuance of the provisions of the Education Act, 1921, and  
duly directed in that behalf, that on the day of  
19 , a school attendance order was duly  
made in pursuance of the said Statute by the said Juvenile Court, by which  
order a certain child named A.B. was ordered to attend the

School at  
every time that the School was open [or] \*

And that on the day of 19 ,  
and on divers other days within the six months before the date of the said  
complaint the said school attendance order was not complied with without  
any reasonable excuse within the meaning of the said Statute. .

By virtue of the provisions of section 3 (3) of the Children and Young  
Persons Act, 1938, you are hereby authorised to bring the said child before  
the said Juvenile Court on

Dated this day of 19 .  
(L.S.)

Justice of the Peace for the [County] aforesaid.

\* State here the other regular manner of attendance (if any).

## 9A

*Interim order to place of safety : Child under five*

In the [County] of [Petty Sessional  
Division of .]

To each and all of the constables of  
and to the occupier of  
being a place of safety.

A.B., a child who appears to the Court to be under the age of six years  
having been before the Juvenile Court sitting at  
on the ground that (*state the matter of complaint in the terms of the appropriate  
section*).

The hearing of the case being adjourned until the day of  
19 .

And the said Court having directed that the said child shall not attend at  
adjourned hearings unless or until required by the Court so to do.

\* [You, the said Constables, are commanded to convey the said child to  
the said place of safety, and there to deliver him/her to the occupier thereof,  
together with this order; and] you, the occupier of the said place of safety  
are commanded to detain the said child until you shall receive a further  
order from the said Court, such detention not to exceed twenty-eight days  
from the date hereof, unless otherwise ordered.

Dated this day of 19 .  
(L.S.)

Justice of the Peace for the [County] aforesaid.

\* Delete when further interim order is made in absence of child.

## 9B

*Further interim order to place of safety*

In the [County] of \_\_\_\_\_ . [Petty Sessional  
Division of \_\_\_\_\_ .]

To each and all of the constables of  
and to the occupier of  
being a place of safety.

A.B., a child [or young person under the age of seventeen years] being  
detained by you, the said occupier of the said place of safety, under an  
interim order made by the Juvenile Court sitting at

And the said Court is now satisfied that by reason of illness or accident  
the said child [or young person] is unable to appear personally before the  
Court.

And the hearing of the case being adjourned.

You, the said occupier of the said place of safety are therefore commanded  
to keep him/her until the \_\_\_\_\_ day of  
19 \_\_\_\_\_, and on that day you, the said constables are required to convey him/her  
before the said Juvenile Court sitting at  
at the hour of \_\_\_\_\_ in the \_\_\_\_\_ noon to be further dealt with according  
to law, unless you shall be otherwise ordered in the meantime.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

(L.S.)

Justice of the Peace for the [County] aforesaid.

## 30A

*Fit person : committal to : application by parent or guardian : refractory child  
or young person*

In the [County] of \_\_\_\_\_ . [Petty Sessional  
Division of \_\_\_\_\_ .]

Before the Juvenile Court sitting at

A.B., the parent [or guardian] of C.D., of \_\_\_\_\_ who  
appears to the Court to be a child [or young person under the age of  
seventeen years] having been born, so far as has been ascertained, on  
the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_, having proved to  
the Court that he/she is unable to control the said child [or young person].

And the Court being satisfied that it is expedient to deal with the said  
child [or young person] by making an order committing the child [or young  
person] to the care of a fit person, and that the parent [or guardian] under-  
stands the results which will follow from, and consents to the making of the  
order :

(Then continue as in Form No. 30 from the words : It is hereby  
ordered.....")

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

(L.S.)

Justice of the Peace for the [County] aforesaid.



## 36

*Supervision order : care or protection*

In the [County] of . [Petty Sessional  
Division of .]

Before the Juvenile Court sitting at

A.B., of who appears to the Court to be a child [or young person under the age of seventeen years], having been born, so far as has been ascertained, on the day of 19 , was [this day] brought before the Court as being in need of care or protection, namely, as being a child [or young person] who [or in respect of whom] (*state description in terms of section 61 of the Children and Young Persons Act, 1933*).

And the Court is satisfied that the said child [or young person] being within the description aforesaid is in need of care or protection :

It is hereby ordered that the said child [or young person] be placed under the supervision of C.D., a probation officer [a person appointed by the Court for that purpose] for a period of

And that :—

\* (a) the said child [or young person having consented to the making of this order] do reside at .

[And it is further ordered that the powers which by subsection 2 of section 4 of the Children and Young Persons Act, 1938, are conferred on the said Court with respect to the variation or revocation of this order may be exercised by any juvenile court acting for the petty sessional division or place in which the said child [or young person] may for the time being reside.]

Dated this day of 19 .

(L.S.)

Justice of the Peace for the [County] aforesaid.

\* Strike out where there is no provision as to residence.

## 37

*Supervision order : application by parent or guardian*

In the [County] of . [Petty Sessional  
Division of .]

Before the Juvenile Court sitting at

C.D., the parent [or guardian] of A.B., of , who appears to the Court to be a child [or young person under the age of seventeen years], having been born, so far as has been ascertained, on the day of 19 , having proved to the Court that he/she is unable to control the said child [or young person] :

And the Court being satisfied that it is expedient to deal with the said child [or young person] by making an order placing the said child [or young person] under supervision, and that the parent [or guardian] understands the results which will follow from and consents to the making of the order :

(*Then continue as in Form No. 36 from the words " It is hereby ordered ".*)

Dated this day of 19 .

(L.S.)

Justice of the Peace for the [County] aforesaid.

## 38A

*Supervision order : after fit person order*

In the [County] of . [Petty Sessional  
Division of .]

Before the Juvenile Court sitting at

Whereas on the day of 19 ,  
an order was made by the (state the Juvenile or other Court which made the  
order) sitting at committing A.B. a child [or  
young person under the age of seventeen years], residing at  
, to the care of C.D. :

And complaint has been made by C.D. [or E.F.], who has made application  
that the said order may be varied [or revoked] :

Upon hearing the said complaint, the [first-mentioned] Court, being a  
Juvenile Court [acting for the same petty sessional division or place as the  
Court of Summary Jurisdiction which made the order] [acting for the petty  
sessional division or place within which the said A.B. is residing], hereby  
revokes the said order :

And the Court is satisfied that it is expedient to substitute for the said  
order, an order placing the said child [or young person] under supervision.

(Then continue as in Form No. 36 from the words " It is hereby ordered ".)

Dated this day of 19 .  
(I.S.)

Justice of the Peace for the [County] aforesaid.

## 38B

*Supervision order : Education cases*

In the [County] of . [Petty Sessional  
Division of .]

Before the Juvenile Court sitting at

Whereas a school attendance order under section 44 of the Education  
Act, 1921, was made by the (state the Court which made the order) on  
the day of 19 , in  
respect of A.B., a child within the meaning of Section 170 of the said Act,  
and a child [or young person under the age of seventeen years] within the  
meaning of the Children and Young Persons Act, 1933, having been born, so  
far as has been ascertained, on the day of  
19 , and the said school attendance order has not been complied with,  
without any reasonable excuse within the meaning of the first-mentioned  
Act.

(Then continue as in Form No. 36 from the words " It is hereby ordered ".)

Dated this day of 19 .  
(I.S.)

Justice of the Peace for the [County] aforesaid.

*Supervision order : notice to child or young person*

To A.B., of

Juvenile Court.

The Court has made an order placing you under the supervision of C.D.,  
of  
for [months] [years]

This means that C.D., will visit you from time to time, will advise you (and, if necessary, try to find you suitable work). He/she will be a friend to you and if he/she thinks it necessary in your interests, he/she may, at any time while this order is still in force bring you before a Juvenile Court, and the Court may then insert additional provisions in the order \* (include a provision determining the place at which you are to reside), or the Court may if it thinks it best in your interests and you are under the age of seventeen years send you to an approved school or commit you to the care of some relative or other suitable person.

The order contains the following provisions :—

That you are to reside at

Dated this                      day of                      19

(L.S.)

Justice of the Peace.

In the case of a supervision order made in substitution for an order committing to the care of a fit person the supervision order ceases to be of effect after the time at which the person to whom the order relates attains the age of eighteen years.

\* Strike out where there is a provision as to residence.

## 39A

*Order varying or revoking supervision order*

In the [County] of                      . [Petty Sessional  
Division of                      .]

Before the Juvenile Court sitting at

Whereas on the                      day of                      , 19 ,  
an order was made by the said Court placing A.B., a child [or young person  
under the age of seventeen years] residing at  
under the supervision of C.D., a probation officer  
[a person appointed by the Court for that purpose] for a period of

And complaint has been made by C.D. [or E.F.], who has made application that the said order may be varied or revoked.

Upon hearing the said complaint the said Court hereby revokes the said order [or varies the said order as follows :—

(Then continue as in Form No. 36 from the words " It is hereby ordered ".)]

Dated this                      day of                      19

(L.S.)

Justice of the Peace for the [County] aforesaid.

45A

*Notice to Secretary of State of supervision order requiring residence in Institution*

In the [County] of \_\_\_\_\_ . [Petty Sessional  
Division of \_\_\_\_\_.]

To the Secretary of State,  
Home Office.

I hereby give you notice that an order was made by the Juvenile Court sitting at \_\_\_\_\_ placing A.B., a child [or young person under the age of seventeen years with his consent] under supervision and containing a provision that the said child [or young person] should reside in an institution, to wit, at \_\_\_\_\_, and that the terms of the order were as follows:—

- (1) that he be under the supervision of C.D., a probation officer [or a person appointed by the Court for that purpose] for a period of \_\_\_\_\_.
- (2) that he reside at \_\_\_\_\_ from \_\_\_\_\_ for a period of \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_.

Clerk of the said Court.

[624]

## INSTITUTIONAL RELIEF

*See PUBLIC ASSISTANCE*

## ISLES OF SCILLY

*See AREAS OF LOCAL GOVERNMENT; SUPERANNUATION.*

## JUVENILE COURTS

*See INFANTS, CHILDREN AND YOUNG PERSONS.*

## JUVENILE OFFENDERS

*See INFANTS, CHILDREN AND YOUNG PERSONS.*

# LAND, ACQUISITION, SALE, ETC., OF

CASES :—	PAGE		PAGE
All Souls College, Oxford v. Middlesex C. C., [1938] 2 All E. R. 586	295	Middlesex C. C., [1938] 3 All E. R. 781, D. C.	296
Re Newhill Compulsory Purchase Order, 1937, Payne's Application, [1938] 2 All E. R. 163, D. C.	295	Re Heywood's Conveyance, Cheshire Lines Committee v. Liverpool Corporation, [1938] 2 All E. R. 230	296
George Wimpey & Co., Ltd. v.		Bedford (Duke) v. Bucks Water Board, [1938] 1 All E. R. 199; see p. 84, ante.	

## CASES

*Compulsory Purchase—Purchase for Public Purposes—Claim for Compensation—Arbitrator's Power to Award Interest—Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 6—Arbitration Act, 1934 (c. 14), s. 11.*

A local authority, as empowered by the Middlesex County Council Act, 1934, s. 35, resolved to acquire certain lands owned by the claimants. It was agreed, *inter alia*, that the sale and purchase should be effected as if the local authority had obtained, and as if there had come into operation, a compulsory purchase order under s. 35 of the Act of 1934, and as if a notice to treat had been served by the local authority for the compulsory purchase of the said lands on Feb. 1, 1936. The claimants claimed compensation, with interest thereon at 4 per cent., from Feb. 1, 1936, and, as the parties could not agree, the assessment of such compensation was referred to an Official Arbitrator. It was now conceded by the claimants that the decision in *Collins v. Feltham Urban District Council*, [1937] 4 All E. R. 189; Digest Supp., determined that interest on the amount of compensation was payable as from the date of the arbitrator's award only, and not from any earlier date. The main question now before the court was whether the Arbitration Act, 1934, s. 11, applied to this assessment of compensation, and empowered the arbitrator to award interest as from the date of the award :—

*Held* : the Arbitration Act, 1934, s. 11, was not applicable to this arbitration.—*ALL SOULS COLLEGE, OXFORD v. MIDDLESEX COUNTY COUNCIL*, [1938] 2 All E. R. 586; 54 T. L. R. 677. [625]

*Compulsory Purchase—“Park, garden or pleasure ground”—“Required for the amenity or convenience of any house”—Housing Act, 1936 (c. 51), s. 75.*

For the purpose of building houses, a local authority made an order for the compulsory purchase of a field some 70 yards distant from a mansion, and mainly used for pasturing stock. The field had also been



used from time to time for the festivities of local societies, and the children of the village were allowed to play there at such times. It was contended that the land was part of a park, garden or pleasure ground, or was otherwise required for the amenity or convenience of the mansion :—

*Held*: the land in question was not part of any park, garden or pleasure ground, nor was it required for the amenity or convenience of the mansion, and the order was properly made.—*Re NEWHILL COMPULSORY PURCHASE ORDER, 1937, PAYNE'S APPLICATION*, [1938] 2 All E. R. 163 ; 102 J. P. 273 ; 82 Sol. Jo. 375 ; *sub nom.* PAYNE v. MINISTER OF HEALTH, 158 L. T. 523 ; 36 L. G. R. 280, D. C. [626]

*Local Authority—Land Acquired for Open Space—Assessment of Compensation—Acquired Land partly for Building Purposes—Damage to Adjoining Land by Severance—Betterment of Land by Provision of Open Space—Acquisition of Land (Assessment of Compensation) Act, 1919 (c. 57), s. 2.*

Land, which had been partly developed as a building estate, was acquired by the local authority for the purpose of an open space. Adjoining land belonging to the same owners was damaged by the loss of access to an arterial road, but would, it was alleged, be bettered by the provision of the open space :—

*Held*: (i) the amount of the compensation in respect of the land acquired was its value in the open market, the expenditure thrown away in part development, the amount of damage by severance, and the increase of overhead charges, but no allowance could be made in respect of the loss of builders' profits ;

(ii) in assessing the compensation in respect of the adjoining land, its increase in value, due to the provision of the open space, was to be taken into account.—*GEORGE WIMPEY & Co., LTD. v. MIDDLESEX COUNTY COUNCIL*, [1938] 3 All E. R. 781, D. C. [627]

*Covenant not to Use for Authorised Purposes—Validity—Sale of Land—Restrictive Covenants—Annexation of Benefit—Insufficient Description of Land to be Benefited.*

In 1876, a railway company acquired by compulsory purchase a plot of land for the purposes of their undertaking. The company entered into a covenant with the vendor, his heirs and assigns that " no engine works or sheds locomotive works or sheds fitting-sheds or any buildings for the purpose of manufacture or business other than goods or passenger stations or signal-boxes or sidings in connection with the railway or stations shall be erected on any lands belonging to or to be acquired (by the company) from J. P. H. his heirs or assigns without the consent of the said J. P. H. his heirs and assigns." The company desired to sell the plot of land to persons who wished to erect a public-house thereon. In 1920, and in 1924, the Liverpool Corporation acquired the adjacent land formerly owned by J. P. H., and claimed to be able to enforce the covenant and prevent the erection of the public-house :—

*Held*: (i) the covenant, even if originally valid, was not a covenant which ran with the land so as to enure for the benefit of the purchasers, because there was no sufficient description of the land to be benefited ;

(ii) there was no enforceable covenant in any event, because the covenant originally entered into was void under the rule in *Ayr Harbour Trustees v. Oswald* (1883), 8 App. Cas. 623; 11 Digest 108, 4.—*Re Heywood's Conveyance, Cheshire Lines Committee v. Liverpool Corporation*, [1938] 2 All E. R. 230; 82 Sol. Jo. 352. [628]

## LAND DRAINAGE

ORDERS, CIRCULARS AND MEMORANDA :—	PAGE	CASES :—	PAGE
Land Drainage (Election of Drainage Boards) Regulations, 1938	297	Smith v. Cawdle Fen, Ely (Cambridge) Commissioners, [1938] 4 All E. R. 64	313

### ORDERS, CIRCULARS AND MEMORANDA

#### LAND DRAINAGE (ELECTION OF DRAINAGE BOARDS) REGULATIONS, 1938

*S. R. & O., 1938, No. 558*

*June 2, 1938*

The Minister of Agriculture and Fisheries (hereinafter called "the Minister") in exercise of the powers conferred upon him under the Land Drainage Act, 1930, hereby makes the following regulations :—

#### *Part I.—As to Register of Electors*

1. A Catchment Board, or a Drainage Board (subject to the approval of the Catchment Board, or if there is no Catchment Board, with the approval of the Minister), may divide a drainage district into electoral districts and may determine the number of members to be elected by each such electoral district.

2.—(1) The Clerk of the Drainage Board (hereinafter referred to as "the Clerk") shall prepare as soon as practicable after the provisions of Section 33 of the Land Drainage Act, 1930, have been applied to the Board either by a scheme under Part II or an Order under Part III of the said Act, a register in respect of the district or of each electoral district, if any, containing in consecutive numerical order, the names (in alphabetical order) of those persons who are entitled to vote at an election of members of the Drainage Board or of members thereof to represent each electoral district as the case may be. The Register shall also contain a description of the property in respect of which each elector is entitled to vote, the rateable value of the property for drainage rates and the number of votes to which each elector is entitled. An elector owning or occupying property in two or more electoral districts shall be entered on the register in respect of his property in each district.

(2) The register shall consist of two parts containing the names of those persons who are qualified by reason of (A) the ownership and (B) the occupation of land respectively.

(3) If any land is owned or occupied by joint owners or joint occupiers such joint owners or joint occupiers may for the purpose of this Rule agree upon one of their number to be deemed to be the owner or occupier of the land and his name shall thereupon be placed on the register. In default of such agreement only the name of the joint owner or occupier (as the case may be) whose name appears first when the names are arranged in alphabetical order shall be placed on the register.

(4) Where a person is qualified as an elector in respect of both the ownership and occupation of any land he shall be entitled to be entered on the register and vote in both capacities.

3.—(1) The Clerk shall publish a notice of the proposed register in the manner prescribed in Rule 28.

(2) The notice shall contain the following particulars :—

- (a) the place where a copy of the proposed register may at all reasonable times for a period of 14 days from the date of publication of the notice be inspected by persons interested ;
- (b) the time, being not less than 14 days, within which any person may claim to be registered as an elector or with a different number of votes or any person on the register or any person who has made a claim to be registered as an elector may object to the registration of some other person whose name appears in the proposed register or to the number of votes allotted to him.

(3) Any person who claims to be registered as an elector and whose name is not already on the register shall send the claim to the Clerk, specifying the property in respect of which his claim is made and the estimated annual value of the property.

(4) In the event of any claims being received the Clerk shall as soon as practicable, give notice in the manner prescribed in Rule 28 that a list of claims has been prepared.

(5) The notice shall contain the following particulars :—

- (a) the place where a copy of the list may at all reasonable times for a period of 14 days from the date of publication of the notice be inspected by persons interested.
- (b) the time, being not less than 14 days, within which any person on the register of electors or any person who has made a claim to be registered as an elector may object to the claim of any other person in the list.

(6) Any person whose name appears on the register as an elector or any person who has made a claim to be registered as an elector may :—

- (a) object to the registration of any other person who is included in the register, or to the number of votes allotted to him, by sending notice of objection containing a statement of the grounds on which such objection is based to the Clerk within the time prescribed by paragraph (2) of this rule.
- (b) object to the claim of any other person to be registered as an elector or to the number of votes claimed by him by sending notice of objection containing such statement as aforesaid to the Clerk within the time prescribed by paragraph (5) of this rule.

(7) The Clerk shall, as soon as practicable after receiving any notice of objection, send a copy of the notice to the person in respect of whose registration, number of votes or claim the notice of objection is given.

(8) The Drainage Board shall, as soon as practicable, consider all claims of which notice given to them in accordance with this Rule, and in respect of which no notice of objection has been given, and, if the Board consider that the claim may be allowed without further enquiry, shall give notice to the claimant that his claim is allowed. If the Board are not satisfied that any such claim can be allowed without enquiry they shall give at least five clear days' notice to the claimant of the time and place at which the claim will be considered by them.

(9) The Drainage Board shall, as soon as practicable, consider any objection of which notice has been given to them in accordance with this Rule, and for that purpose shall give at least five clear days' notice to the objector and to the person in respect of whose registration, number of votes or claim to registration the notice of objection has been given, of the time and place at which the objection will be considered by them.

(10) The decision of the Drainage Board on any claim or objection shall be final.

(11) The Drainage Board, having considered and determined all claims and objections, shall approve the register with such additions and amendments as may be necessary, and notice of such approval shall be published in the manner prescribed in Rule 28.

(12) The notice shall contain the following particulars :—

(a) the date of the approval of the register by the Drainage Board :

(b) the place where the register may at all reasonable times be inspected by persons interested.

(13) No misnomer or inaccurate description of any person or place on the register shall prejudice the operation of these rules as respects that person or place, provided that the person or place is so designated as to be commonly understood.

(14) The register shall be revised in the month of April immediately preceding each triennial election of members of the Drainage Board.

[629]

## *Part II.—As to Elections*

### *A.—General*

4.—(1) The Returning Officer shall be the Clerk of the Drainage Board, or, if there is no Clerk, some person nominated in writing by the Chairman of the Drainage Board. If at any time, from any default of such Clerk or Chairman or from any other reason, there is no Returning Officer, or such Returning Officer is unwilling or unable to act, the Catchment Board within whose area the district of the Drainage Board is situated, or if there is no such Catchment Board, the Minister may, on the application of any member of the Board, appoint a Returning Officer.

(2) The Returning Officer may, in writing, appoint a fit person or persons to be his Deputy or Deputies for all or any of the purposes relating to the election of members of the Drainage Board. A deputy returning officer shall have all the powers, duties and liabilities of the Returning Officer in relation to the matters in respect of which he is appointed a deputy.

5. The day or days of the poll for the election of the Members of a Drainage Board shall be such day or days between the 24th day of October and 1st day of November as may be fixed by the Drainage Board.

6. The Returning Officer shall according to the direction of the Drainage Board either—

- (a) publish between the 7th and the 15th days of September a notice of election in the Form No. 1 in the Schedule to these Rules and such notice shall be published in the manner prescribed in Rule 28, not less than 14 clear days before the date fixed in the notice as the last day for the receipt of nominations by the Returning Officer, or
- (b) publish a notice of the election and of a meeting or meetings of electors for the nomination of members at such place within (a) the drainage district or (b) the town or place where the offices of the Drainage Board are situate, or (c) some other convenient centre adjudged reasonable by the Drainage Board and on such day or days and at such time or times between the 24th and 30th days of September as the Drainage Board may appoint. The notice shall be in the Form No. 2 in the Schedule to these Regulations and shall be published in the manner prescribed in Rule 28, not less than 14 clear days before the day or any of the days fixed for the meeting or meetings.

7.—(1) Each candidate for election as a member of a Drainage Board shall be nominated in writing by an elector.

(2) The Returning Officer shall provide nomination papers and any elector may obtain the same from him free of charge.

(3) Every nomination paper shall be in the Form No. 3 in the Schedule to these Regulations or in a form substantially to the like effect, and—

(a) shall state the surname and other name or names in full of the candidate and his place of abode, description and qualification, and

(b) shall be signed by the nominator and witnessed by two other persons.

(4) No candidate may be nominated for more than one electoral district.

(5) The names of more than one candidate shall not be inserted in any one nomination paper.

(6) Any elector of the Drainage District or of an electoral district (as the case may be) may sign nomination papers for as many candidates as there are members to be elected for such Drainage District or electoral district (as the case may be), but no more. An elector being registered as an elector in two or more electoral districts may nominate candidates in each of such electoral districts.



(7) If any elector shall sign nomination papers for a larger number of candidates than there are members to be elected for the electoral district such of the nomination papers signed by him as are first received by the Returning Officer up to the number of members to be so elected shall alone be valid. Provided that for the purposes of this paragraph nomination papers not properly filled up and signed shall be excluded.

(8) The Returning Officer shall number the nomination papers in the order in which they are received by him, and the first valid nomination paper received by him for a candidate shall be deemed to effect the nomination of that candidate.

(9) The Returning Officer shall, as regards each candidate, decide whether he has been nominated by a valid nomination paper, and his decision whether a nomination paper is or is not valid, that is to say, whether the candidate is or is not duly qualified and whether the nomination paper has or has not been properly filled up and signed by the nominator and witnessed by two other persons, and whether it is or is not invalid under Rule 10, if such rule is applicable, shall be final and shall not be questioned in any proceedings whatever. Provided that the Returning Officer shall not be required to decide before the date of the election whether any nomination paper is invalid by reason of the non-payment of any rate.

(10) If the Returning Officer shall decide that a candidate has not been nominated by a valid nomination paper, he shall forthwith put a note on the nomination paper stating the grounds of his decision and shall sign such note.

#### *B.—If a Meeting is held*

8.—(1) The Returning Officer shall preside at the Meeting and shall ask that nomination papers shall be handed in to him and they shall be handed in accordingly.

(2) When the Returning Officer shall decide, in accordance with paragraph 10 of Rule 7 that a nomination paper is invalid and shall have put and signed a note on the nomination paper stating the grounds of his decision, he shall state the effect of it to the Meeting.

(3) When it shall appear to the Returning Officer that all nomination papers have been handed in (including any nomination paper in substitution for one decided to be invalid) and not less than ten minutes shall have elapsed since he took the chair, he shall state to the Meeting the names of the duly nominated candidates in the alphabetical order of their surnames, and also their places of abode and their descriptions and qualifications, and the names of their proposers. After such statement has been made, no other nomination paper shall be received.

(4) At the Meeting any candidate may withdraw his candidature. Every withdrawal shall either be in writing signed by the candidate and handed to the Returning Officer, or, if the candidate is present at the Meeting, be declared by word of mouth in which case the Returning Officer shall thereupon write "Candidature withdrawn" on the back of the nomination paper and the candidate shall sign his name or initials thereto. Except as aforesaid, no candidature shall be withdrawn at the Meeting.

(5) If by such withdrawals the number of candidates be reduced below the number of persons to be elected, the Returning Officer shall, if desired by any elector present at the Meeting, allow a reasonable time at the Meeting during which further nomination papers may be handed in.

(6) If any such further nomination papers are handed in as aforesaid the provision of Rule 7 shall apply thereto.

9.—(1) If the candidates (including those whose nominations are handed in under paragraph (5) of Rule 8) whose nominations respectively the Returning Officer decides to be valid and whose respective candidatures are not withdrawn, are not more in number than the persons to be elected, those candidates shall be deemed to be duly elected, and shall be declared by the Returning Officer to be elected.

(2) The Returning Officer shall, as early as practicable after the Meeting, by notice in accordance with Rule 28 certify in the Form No. 4 in the Schedule to these Rules, the names, place of abode, description and qualification of each of the persons elected, and inform each of the persons elected of the fact of his election.

#### *C.—If a Meeting is not held*

10. Every nomination paper shall be sent to the Returning Officer so that it shall be received at his office within the time prescribed for that purpose in the notice of election. A nomination paper received after that time shall not be valid. The Returning Officer shall note on each nomination paper whether it was received before or after that time.

11. After deciding that a nomination paper of any candidate is invalid (except where the nomination of the candidate by any other nomination paper has been decided to be valid) the Returning Officer shall on the day following the last day for the receipt of nominations send, by post or otherwise, notice of his decision to the candidate.

12. If the number of candidates who receive valid nominations does not exceed the number of members to be elected the Returning Officer shall give public notice in accordance with Rule 28 in the Form No. 5 in the Schedule to these Rules stating that no poll will be held and declaring the candidates to be elected and shall inform each of the persons elected of the fact of his election.

#### *D.—General*

13. If at the expiration of the time fixed for nomination, more candidates stand nominated than there are vacancies to be filled up, the Returning Officer shall (except as hereinafter mentioned) arrange for a poll to be taken.

14. If a poll has to be taken the Returning Officer shall on the day after the Meeting or after the last day for the receipt of nominations by him, as the case may be, publish in accordance with Rule 28 and affix on the principal door of the Office of the Drainage Board a statement containing the names, places of abode, descriptions and qualifications

of the persons nominated for election, and also containing a notice of his decision as regards each candidate as to whether he has been nominated by a valid nomination paper or not. He shall also send by post or otherwise to each candidate who has been nominated and has not withdrawn a notification of his nomination.

15. Any candidate who has been duly nominated may, before 5 o'clock in the afternoon of the fourth day after the receipt of notice of his nomination sent to him pursuant to Rule 14, withdraw his candidature by delivering or causing to be delivered at the office of the Returning Officer a notice in writing of such withdrawal signed by him.

16. If by the withdrawal of any candidate as provided by Rule 15, the number of candidates is reduced to a number not exceeding the number of persons to be elected, or if the number of candidates is otherwise so reduced, the Returning Officer shall give public notice in accordance with Rule 28 in the Form No. 5 in the Schedule to these Rules stating that no poll will be held and declaring the remaining candidates to be elected and shall inform each of the persons elected of the fact of his election.

17. If the number of valid nominations is less than the number of members to be elected, or if there is no valid nomination, the Returning Officer shall as soon as practicable give notice thereof to such number of the retiring members of the Drainage Board (or of the retiring members for the electoral district concerned, as the case may be), as is required to make up the number of members to be elected, and he shall forthwith declare such retiring members to be re-elected, or if no previous election has been held, to be elected. Members so declared to be elected or re-elected shall be such as were highest on the poll at the last election, or if the poll was equal or there was no poll or no previous election has been held, as shall have been selected by lot for that purpose by the Returning Officer.

18. If a poll has to be taken the Returning Officer shall as soon as practicable after the expiration of the fourth day specified in Rule 15 publish in accordance with Rule 28 a notice of the poll in the Form No. 6 in the Schedule to these Rules and not less than seven days before the poll, shall send by post to each qualified elector or to his Deputy duly appointed a voting paper in the Form No. 7 in the Schedule to these Rules or in a form substantially to the like effect in respect of each hereditament owned by him and a voting paper as aforesaid in respect of each hereditament occupied by him. Each form shall bear in the right-hand top corner the name of the elector and number corresponding with the number of the elector in the Register, and the number of votes to which such elector is entitled.

19. An elector who has not received a voting paper sent by post as aforesaid to his address as appearing on the register, or who has before re-delivery thereof to the returning officer inadvertently spoilt his voting paper in such manner that it cannot be conveniently used as a voting paper, or who has lost his voting paper, may on his transmitting to the Returning Officer a declaration signed by himself before the Returning Officer or a Justice of the Peace setting forth the facts of the non-receipt, the inadvertent spoiling, or the loss of the voting paper, require the Returning Officer to send him a new voting paper in place

of the one not received, or spoilt, or lost, and in case the voting paper has been spoilt, the spoilt voting paper shall be returned to the Returning Officer and when received by him shall be immediately cancelled, and in every case when a new voting paper is issued a mark shall be placed opposite the number of the elector's name on the register, to denote that a new voting paper has been issued in place of the one not received, or spoilt or lost.

20.—(1) Votes may be given either personally or by deputy. A deputy shall be appointed in writing by the appointer either generally or in relation to a particular election, but he shall not be entitled to vote unless the instrument appointing him shall have been deposited at the office of the Drainage Board not later than the date of the Meeting or if there is no Meeting than the last day fixed for the receipt of nominations.

(2) Such deputy shall be appointed in the case of a University or a College within the meaning of the Universities and College Estates Act, 1925, either under the Common Seal or under the hands of the Head or Senior Bursar or Treasurer of such College, in the case of any other Corporation aggregate either under their common seal or under the hand of the Secretary of the Corporation, and in the case of Local Authorities in the manner prescribed by law for the execution of documents by such bodies. In other cases the Returning Officer shall record the vote of a deputy if his appointment as such appears to him to be sufficiently authenticated.

21. Each elector may vote for as many candidates as there are members to be elected and no more. He shall record the votes to which he is entitled in favour of such candidates as he thinks fit by placing opposite to the name of each candidate the number of votes he wishes to record in favour of that candidate but the number of votes so recorded for any one candidate shall not exceed the number to which the elector is entitled.

22. The voting paper shall be filled in, and signed by the elector in the presence of a witness who must write his name and address in the margin.

23. In place of any signature required by these Rules it shall be sufficient for the signatory to affix his mark in the presence of two witnesses who must write their names and addresses in the margin.

24. The Returning Officer shall keep all the voting papers received by him until the expiration of the time appointed for their return to him, and immediately thereafter proceed to count the votes, and forthwith declare the candidates who have gained the majority of the votes polled to be elected.

25. If an equality of votes is found to exist between any of the candidates and the addition of a vote would enable any of such candidates to be declared elected the Returning Officer shall determine by lot which of the candidates whose votes are equal shall be elected.

26. The declaration of the result of the Poll shall be in Form No. 8 in the Schedule to these Rules or in a form to the like effect. The Returning Officer making the declaration shall forthwith publish the same in accordance with Rule 28 and send a copy to the Clerk of the Drainage Board (if he is not the Returning Officer) and also to the Clerk of the Catchment Board (if any). In the case of the Board of a Drainage District outside any Catchment Area, the Returning Officer shall send a copy to the Clerk of the Council of each County and County Borough in which the Drainage or Electoral District or any part thereof is situate.

27. The voting papers (including invalid and spoilt papers) shall be kept in a secure place by the Returning Officer for the period of six months from the date of the election. At the end of that period they shall be destroyed and during that period they shall not be shown to any person except in pursuance of an order of a court of law.

28. Any notice, certificate or declaration required by these Rules shall be given by inserting the same in one or more newspapers circulating in the Drainage District or otherwise in such manner as the Minister considers sufficient and so directs.

29. Any expenses properly incurred by the Returning Officer in the execution of these Rules shall be deemed to be part of the general expenses of the Drainage Board and shall be defrayed accordingly.

30. These Regulations may be cited as "The Land Drainage (Election of Drainage Boards) Regulations, 1938," and the Land Drainage (Election of Drainage Boards) Regulations, 1932, are hereby revoked. [630]

\* \* \* \* \*

## SCHEDULE

### FORM No. 1

#### LAND DRAINAGE ACT, 1930

.....Drainage District.

#### *Notice of Election*

1. Notice is hereby given that the day (or days) of the poll for the election of members of the Drainage Board for (the several electoral districts of) the above named Drainage District will, if a poll shall be necessary, be

2. The number of members of the Drainage Board (for the several electoral districts) is as follows :—(a)

3. Each Candidate for election must be nominated in writing and the nomination paper must be sent to me, so that it shall be received at  
not later than 12 noon on                      day the                      day  
of                      , 19                      .

4. An elector may not sign more nomination papers than there are members to be elected for (the electoral districts of) the Drainage District.

5. Forms of nomination paper may be obtained free of charge from me at

Dated this                      day of                      , 19 .

(Signed)

Clerk of the Drainage Board and Returning Officer.

Address.....

(a) Insert here the names of the electoral districts (if any) with the number to be elected for each.

N.B.—Votes at the election of members of a Drainage Board may be given either personally or by deputy. A deputy shall be appointed in writing by the appointer either generally or in relation to a particular election, but he shall not be entitled to vote unless the instrument appointing him shall have been deposited at the office of the Drainage Board not later than the date of the Meeting or if there is no Meeting than the last day fixed for the receipt of nominations.

## FORM No. 2

### LAND DRAINAGE ACT, 1930

.....Drainage District.

#### *Notice of Election and of Meeting for Nomination*

1. Notice is hereby given that the day (or days) of the poll for the Election of Members of the Drainage Board (for the several electoral districts) of the above named Drainage District will, if a poll shall be necessary, be

2. The number of members of the Drainage Board (for the several electoral districts) is as follows :—(a)

3. A Meeting for the Nomination of Members (for the several electoral districts) will be held at the place (or places) and at the time (or times) as follows :—(b)

4. Each Candidate for election must be nominated in writing and the nomination paper must be handed in at the Meeting.

5. An elector may not sign more nomination papers than there are members to be elected for (the electoral districts of) the Drainage District.



6. Forms of nomination paper may be obtained free of charge from me at

Dated this                      day of                      , 19 .

(Signed)

Clerk of the Drainage Board and Returning Officer.

Address.....

(a) Insert here the names of the electoral districts (if any) with the number to be elected for each.

(b) Insert here the names of the electoral districts (if any) and the places and times of meeting.

N.B.—Votes at the election of members of a Drainage Board may be given either personally or by deputy. A deputy shall be appointed in writing by the appointer either generally or in relation to a particular election, but he shall not be entitled to vote unless the instrument appointing him shall have been deposited at the office of the Drainage Board not later than the date of the Meeting or if there is no Meeting than the last day fixed for the receipt of nominations.

### FORM No. 3

#### LAND DRAINAGE ACT, 1930

#### *Form of Nomination Paper*

.....Drainage District.

.....Electoral District.

*Election of Members of*

*Drainage Board in the*

Year 19 .

I, the undersigned, being an Elector of the said (Electoral) District, or otherwise qualified to nominate candidates for election, do hereby nominate the undermentioned person as a candidate at the said Election.

Names of Candidate.		Place of Abode.	Description.	Qualification (specify qualification according to directions in the instructions on back).
Surname.	Other names in full.			
1.	2.	3.	4.	5.

*Particulars of Land(s) in respect of which qualification of the Candidate is claimed*

Parish.	No. of Assessment in Rate Book. (As given in Rate Demand.)	Description (As given in Rate Demand.)

Name of Proposer in full .....

Postal Address .....

*Particulars of Land(s) in respect of which qualification of the Proposer is claimed*

Parish.	No. of Assessment in Rate Book. (As given in Rate Demand.)	Description (As given in Rate Demand.)

Signature of Proposer.....

Signature of Witness.....

Postal Address.....

Signature of Witness.....

Postal Address .....

*Instructions*

The Land Drainage Act, 1930, provides that the qualification for membership of a Drainage Board shall be as follows :—

“ 1. No person shall be qualified for election as a member of a drainage board unless he is either—

- (a) the owner of not less than ten acres of land in respect of which a drainage rate may be levied by the board and situate in the electoral district for which he is a candidate for election ;  
or
- (b) the occupier, whether under tenancies of year to year or otherwise, of not less than twenty acres of such land as aforesaid ;  
or
- (c) the owner or occupier of land which is of the annual value of thirty pounds or upwards and situate in the electoral district for which he is a candidate for election ; or
- (d) a person nominated as a candidate for election by the owner (whether the owner is an individual or a body of persons) of land which is situate in the electoral district in question, and is either of not less than ten acres in extent or of the annual value of thirty pounds or upwards.

Provided that—

- (i) No person shall be deemed to be qualified as aforesaid as being an occupier of any land if at the date of the election any amount demanded in respect of any drainage rate levied on that land has remained unpaid for more than one month ; and

- (ii) no person shall be deemed to be qualified as aforesaid as being the owner or a person nominated by the owner, of any land if at the date of the election any amount demanded in respect of any owner's drainage rate levied in respect of that land has remained unpaid for more than one month."

If the candidate is registered as an elector in Part A (owner's register) of the Register of Electors insert in column 5 "ownership of land"; if in part B (occupier's register) of the Register of Electors insert in column 5 "occupation of land"; and if registered in both parts then insert, if desired, "ownership and occupation of land". If the candidate is a person nominated as a candidate for election by the owner of land which is situate in the electoral district in question and is either of not less than ten acres in extent or the annual value of thirty pounds or upwards then insert in column 5 "nominated by owner".

The paper must be signed by the proposer in the presence of two witnesses. The place of abode of the proposer and the witnesses and the qualification of the proposer must also be inserted. Instead of signing the proposer may affix his or her mark if it is witnessed by the witnesses.

An elector must not sign more nomination papers than there are members to be elected for the (electoral districts of the) Drainage Board and he must not sign a nomination paper for (any electoral district of) the Drainage Board unless he is registered as an elector therein. An elector registered as an elector in two or more electoral districts in the above Drainage Board may sign nomination papers for candidates in each of such electoral districts.

N.B.—If at the date of the election any amount demanded in respect of

(a) any drainage rate levied on any land in respect of the *occupation* of which the qualification of the candidate or of the proposer is claimed, or

(b) any *owners'* drainage rate levied on any land in respect of the *ownership* of which the qualification of the candidate or of the proposer is claimed,

has remained unpaid for more than one month, the nomination will be void.

#### FORM No. 4

#### LAND DRAINAGE ACT, 1930

.....Drainage District.

#### *Certificate by Returning Officer when No Poll*

I, the undersigned, being the Returning Officer at the Meeting (or Meetings) held on the                      day of                      , 19    , do hereby certify that the following Candidates were declared by me at the meeting to be elected as Members of the Drainage Board for (the several Electoral Districts of) the above named Drainage District.

Electoral District.	Names of Candidates (Surnames first).	Place of Abode.	Description.	Qualification.

Dated this                      day of                      , 19    .

.....  
Returning Officer.

Address.....

## FORM No. 5

## LAND DRAINAGE ACT, 1930

.....Drainage District.  
 .....

*Declaration by Returning Officer when No Poll*

I, the undersigned, being the Returning Officer for the election of Members of the Drainage Board (for the several electoral districts) of the above-named Drainage District do hereby declare that as the number of candidates does not exceed the number of persons to be elected the following Candidates are elected as Members of the Drainage Board for (the several electoral districts of) the Drainage District.

Electoral District.	Names of Candidates (Surnames first).	Place of Abode.	Description.	Qualification.

Dated this                      day of                      , 19   .

.....  
 Returning Officer.

Address.....

## FORM No. 6

## LAND DRAINAGE ACT, 1930

.....Drainage District.  
 .....

*Notice of Poll**Notice if Hereby Given :*

1. That a Poll for the election of Members of the Drainage Board (for the several electoral districts) of the above-named Drainage District will be taken.
2. That the number of Members to be elected (for the several electoral districts) is as follows :—(a)

3. That the names in alphabetical order, places of abode, and descriptions of the Candidates for election and the names of their respective proposers are as follows :—

Electoral District.	Names of Candidates (Surnames first).	Place of Abode.	Description.	Qualification.	Names of Proposers (Surnames first).

4. A voting paper will be sent by post to every elector whose name appears in the Register of Electors and who is entitled to vote at this election, with the number of votes he is entitled to record, with instructions for filling up.

5. Every voting paper properly filled up must be delivered to me by pre-paid post or otherwise at the undermentioned address (being the Office for the purpose of election) not later than 12 noon on                      day, the day of                      , 19 .

Dated this                      day of                      , 19 .

.....  
Returning Officer.

Address.....

(a) Insert here the names of the electoral districts (if any) with the number to be elected for each.

### FORM No. 7

Name of Elector .....  
Name or description of hereditament.....  
No. in Register.....  
Whether voting paper is issued in respect of ownership or occupation.....  
No. of Votes to which Elector is entitled.....

### LAND DRAINAGE ACT, 1930

.....Drainage District.  
.....Electoral District.

### *Voting Paper*

Names, places of abode, and description of the Candidates for election and number of votes recorded in favour of each Candidate.

Name of Candidate. (Surname first).	Place of Abode.	Description.	Qualification.	Insert number of votes in favour of each Candidate.

(Signed) .....

Witness to the Signature of  
Elector.

(Name) .....

(Address).....

*Note.*—The number of votes which the elector is entitled to record in favour of each of the candidates is.....but the elector must not vote for more than.....candidates.

For instructions for filling up this voting paper see back.

*Instructions for filling up Voting Paper*

The elector may vote for.....candidates and no more. He may record the votes to which he is entitled in favour of such candidates as he thinks fit by placing opposite to the name of each candidate in the right hand column, not a cross, but the number of votes he wishes to record in favour of that candidate, but the number of votes which he records in favour of any *one* candidate must not exceed the number to which the elector is entitled.

The voting paper must be filled in and signed by the elector in the presence of a witness who must write his name and address in the space provided.

The voting paper properly filled up must be delivered by prepaid post or otherwise to the Returning Officer at.....  
not later than 12 noon on.....day the.....day of....., 19 ..

In the place of a signature it shall be sufficient for the elector to place his mark in the presence of two witnesses who must write their names and addresses in the margin.

If the elector inadvertently spoils a voting paper or loses a voting paper, he may on transmitting to the Returning Officer a declaration signed by him before the Returning Officer or a Justice of the Peace setting forth the facts of inadvertent spoiling or the loss of the voting paper, require the Returning Officer to send him a new voting paper. The spoilt voting paper shall be returned to the Returning Officer.

If the elector votes for more than.....candidates or records more votes for any candidate than he is entitled to, his voting paper will be void, and will not be counted.

N.B.—If at the date of the election any amount demanded in respect of any owner's \* drainage rate levied on the hereditament to which this voting paper refers has remained unpaid for more than one month, the voting paper will be void and will not be counted.

If at the date of the election any amount demanded in respect of

- (a) any drainage rate levied on any land in respect of the *occupation* of which the qualification of any candidate or of the proposer is claimed, or
- (b) any *owner's* drainage rate levied on any land in respect of the *ownership* of which the qualification of any candidate or of the proposer is claimed,

has remained unpaid for more than one month, the candidate will not be qualified for election and any votes recorded in favour of him will be void and will not be counted.

\* If the voting paper is not issued in respect of the ownership of the hereditament to which it refers, the word "owner's" should be deleted.

## FORM No. 8

## LAND DRAINAGE ACT, 1930

.....*Drainage Board.*

*Declaration of Result of Poll*

I, the undersigned, being the Returning Officer at the poll for the election of Members of the Drainage Board (for the several electoral districts) of the



above named Drainage District do hereby give notice that the number of votes recorded for each Candidate at the elections is as follows :—

Electoral District.	Names of Candidates (Surnames first).	Place of Abode.	Description.	Qualification.	Number of votes recorded.

And I do declare that the following persons are duly elected Members of the Drainage Board (for the several electoral districts).

(a)

Dated this                      day of                      , 19 .

.....Returning Officer.

Address.....

(a) Here insert names of the Electoral District (if any) and the members elected for each.

[631]

## CASES

### *Statutory Powers—Discretionary Powers—Liability for Nonfeasance—Land Drainage.*

Plaintiff's lands were in 1937 severely damaged by reason of floods. It was alleged that the damage was due to the failure of defendants to keep in good repair the drainage works within their area. The main and substantial cause of the flooding was that a bank was too low. It was found that the dykes were kept reasonably clean and that the pumping system was as efficient as defendants could make it, having regard to the funds at their disposal. The statutes from which defendants derived their powers, while they gave them power to do work for the draining of the fens, did not direct or require them to do such work :

*Held* : the action failed *in limine*, because defendants were not under a statutory duty to execute the repairs which, it was alleged, they had failed to execute.—SMITH v. CAWDLE FEN, ELY (CAMBRIDGE) COMMISSIONERS, [1938] 4 All E. R. 64 ; 82 Sol. Jo. 890. [632]

# LOCAL LAND CHARGES

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## ORDERS, CIRCULARS AND MEMORANDA

### LOCAL LAND CHARGES (AMENDMENT) RULES, 1938

*S. R. & O.*, 1938, No.  $\frac{499}{L. 8}$

*May 10, 1938*

I, Frederic Herbert Lord Maugham, Lord High Chancellor of Great Britain, by virtue and in pursuance of the Land Charges Act, 1925, and all other powers enabling me in this behalf, do hereby make the following Rules :—

1. A Rule or Schedule referred to by number in these Rules means the Rule or Schedule so numbered in the Local Land Charges Rules, 1934.

2. In paragraph (1) of Rule 2 the words "Public Health Act, 1936", shall be substituted for the words "Public Health Act, 1875".

3. Paragraph (1) of Rule 4 shall be revoked and the following paragraph shall be substituted therefor :—

" 4.—(1) For the purpose of registering a local land charge the proper officer to act as local registrar shall be the clerk, or the person for the time being authorised to act as clerk, of the local authority in whose favour the charge is created or by whom it is enforceable :

Provided that :—

(i) in the case of the following charges the proper officer shall be the clerk, or the person for the time being authorised to act as clerk, of the borough or district council in whose borough or district the land affected by the charge is situate :—

(a) planning charges other than those arising or created within the County of London or the City of London ;

- (b) local land charges, other than any planning charges, imposed by the Council of a county, borough (including a metropolitan borough), urban or rural district, or by the Common Council of the City of London, which affect land outside the county, borough, district or the City of London, as the case may be ; and
- (c) local land charges, other than planning charges, imposed by any registering authority other than an authority mentioned in paragraph (b) ;
- (ii) in the case of planning charges arising or created within the County of London, the proper officer shall be the clerk, or the person for the time being authorised to act as clerk, of the London County Council ;
- (iii) in the case of—
  - (a) planning charges arising or created within the City of London, or
  - (b) local land charges (other than planning charges) which affect land within the City of London and which are enforceable by a local authority other than the Common Council of the City of London,

the proper officer shall be the town clerk, or the person for the time being authorised to act as town clerk, of the City of London.

4. In subparagraph (b) of paragraph (1) of Rule 11 the words " set out in paragraph (2) of this Rule " shall be substituted for the words " set out in the preceding paragraph ".

5. In the First Schedule under the heading " Official Certificate of Search " the words " the subsisting entries referred to in the Schedule " shall be substituted for the words " the subsisting entries set out in the Schedule ".

6. These Rules may be cited as the Local Land Charges (Amendment) Rules, 1938, and shall come into operation on the 23rd day of May, 1938, and the Local Land Charges Rules, 1934, shall have effect as amended by these Rules.

7. Copies of the Local Land Charges Rules, 1934, printed under the authority of His Majesty's Stationery Office, may be printed with any additions, omissions or substitutions directed to be made by these or any other amending Rules, but with a footnote in each instance referring to such amending Rules ; and the principal Rules so printed may be cited as the Local Land Charges Rules.

Dated the 10th day of May, 1938.

*Maugham, C*

## LOCAL LAND CHARGES (AMENDMENT NO. 2) RULES, 1938

*S. R. & O.*, 1938, No. 562  
L. 12

June 2, 1938

I, Frederic Herbert Lord Maugham, Lord High Chancellor of Great Britain, by virtue and in pursuance of the Land Charges Act, 1925, and all other powers enabling me in this behalf, do hereby make the following Rules :—

1. Paragraph (iii) of the proviso to paragraph (1) of Rule 4 of the Local Land Charges Rules, 1934, as amended by the Local Land Charges (Amendment) Rules, 1938, shall be omitted and the following paragraph shall be substituted therefor :—

“(iii) in the case of planning charges arising or created within the City of London, the proper officer shall be the town clerk, or the person for the time being authorised to act as town clerk, of the City of London.”

2. These Rules may be cited as the Local Land Charges (Amendment No. 2) Rules, 1938, and shall be deemed to have had effect from the commencement of the Local Land Charges (Amendment) Rules, 1938, and the Local Land Charges Rules, 1934, as amended, shall have effect as further amended by these Rules.

Dated the 2nd day of June, 1938.

*Maugham, C.*

[634]

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## LOCAL LOANS

*See FINANCE.*

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## LODGING-HOUSES

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### CASES

*Common Lodging-house—Registration—Letting at Weekly Rent in Advance—Whether Premises Outside, Definition of Common Lodging-house—Public Health Act, 1936 (c. 49), ss. 235, 236.*

Appellants were charged with having kept a common lodging-house at certain premises without being registered as the keepers thereof, contrary to the provisions of the Public Health Act, 1936 (c. 49), s. 236. The premises, which had for fifty-nine years been registered with the local authority as a common lodging-house, provided accommodation by night for 201 poor persons. Until the end of 1937 each person using the premises paid 10*d.* a night, and on Jan. 21, 1938, the charge was altered to 5*s.* 6*d.* per week. Appellants contended that the change to the system of minimum weekly contracts, with payment in advance, took the premises outside the definition of a common lodging-house in the Act of 1936. Respondent contended that the period of letting was unimportant, as there was no mention of any period of letting in the

definition of a "common lodging-house" in s. 235 of the Act of 1936, and that it was sufficient to have proved that the premises were used and provided for the purpose of accommodating by night poor persons who resorted thereto and were allowed to occupy one common room for the purpose of sleeping or eating. The justices convicted appellants, and thereupon this appeal was brought :—

*Held*: as the definitions of a common lodging-house and of the character which it must exhibit were now to be found only in the definition in s. 235 of the Act of 1936, the justices were right in convicting upon the facts before them.—**PEOPLE'S HOSTELS, LTD. v. TURLEY**, [1938] 4 All E. R. 72; 159 L. T. 557; 102 J. P. 509; 55 T. L. R. 27; 82 Sol. Jo. 870, D. C. [635]

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## LUNACY AND LUNATICS

*See PERSONS OF UNSOUND MIND.*

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## MARKETS AND FAIRS

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### ORDERS, CIRCULARS AND MEMORANDA

#### MARKETS AND FAIRS (DELEGATION OF FUNCTIONS RELATING TO WEIGHING OF CATTLE) ORDER, 1938

*S. R. & O., 1938, No. 1597*

*December 19, 1938*

In exercise of the powers conferred upon him by Section 21 of the Livestock Industry Act, 1937, the Minister of Agriculture and Fisheries hereby Orders as follows :—

1. All those functions exercisable in relation to markets by the said Minister which by virtue of the said Section of the said Act may by order be delegated to the Livestock Commission are hereby delegated to the said Commission.

2. This Order shall come into operation on the first day of January, nineteen hundred and thirty-nine.

3. This Order may be cited as the Markets and Fairs (Delegation of Functions relating to Weighing of Cattle) Order, 1938. [636]

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## MEAT

*See FOOD AND DRUGS.*

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# MEDICAL OFFICER OF HEALTH

ORDERS, CIRCULARS AND MEMORANDA :—

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## ORDERS, CIRCULARS AND MEMORANDA

### CIRCULAR AS TO THE CONTENTS AND ARRANGEMENT OF THE ANNUAL REPORTS OF MEDICAL OFFICERS OF HEALTH FOR 1938

*Circular 1728*

*(England)*

*October 25, 1938*

SIR,

1. I am directed by the Minister of Health to refer to Article 17 (5) of the Sanitary Officers (Outside London) Regulations, 1935, and Article 14 (3) of the Sanitary Officers Order, 1926, and to request that the Council will direct the Annual Report of the Medical Officer of Health for 1938 to be drawn up on the lines indicated below.

2. The Annual Report for 1938 should contain :—

- (a) Information in regard to the matters specified in Appendix I to this circular, set out as far as possible in the order there given, under the six main heads A to F. It will, however, be sufficient if the information given (with the exception of those items for which full particulars are requested) is limited to a record of *alterations, improvements or developments which have taken place during the year*. It will not be necessary to repeat matter which has appeared in previous reports save where it is wished to call attention to old defects not yet remedied.

It will, of course, be open to the Medical Officer of Health to report fully on any of the matters specified in Appendix I if he considers it desirable.

The Medical Officer of Health of any district, the boundaries of which have been materially altered during 1938, should comment on any new problems of public health administration created by the changed conditions.

- (b) A statement of any noteworthy conditions prejudicial to the health of the area which have not been adequately dealt with in Special Reports of the Medical Officer of Health.
- (c) A statement of any special action taken during the year in the area to arouse public interest in the prevention of ill-health or the importance of early treatment. A brief description of the special efforts made locally in connection



with the national campaign to secure a wider use of the health services should be included under this heading.

- (d) A summary of important Special Reports, if any, made during the year, including those which have been separately transmitted to the proper authorities.

It will, of course, remain open to the Council to direct that the Report should be extended beyond the limits indicated in this paragraph. It may, for example, be advantageous that the Medical Officer of Health should discuss a special subject of importance to the health of the area in the course of his Annual Report rather than in a Special Report.

#### PROVISION OF STATISTICS BY THE REGISTRAR-GENERAL

3. The Registrar-General will continue to facilitate the preparation of the Report by issuing, for inclusion therein, the statistics specified in the appropriate sections of Appendix II to this Circular. It is anticipated that these statistics will be available during the latter part of March or the early part of April. The attention of the Medical Officer of Health is specially invited to the Note to Appendix II.

#### EARLY COMPLETION OF REPORTS

4. The early receipt of these statistics will, it is hoped, enable the Report to be completed and sent to the appropriate authorities *not later than the middle of May*, and I am to remind the Council that the value of the Annual Report to them and the inhabitants of the area, as well as to the Central Authorities concerned, is greatly reduced if the Report is not completed very shortly after the end of the period to which it relates.

#### REPORTS FOR UNITED SANITARY DISTRICTS

5. If a Medical Officer of Health for a Union of Districts makes a single Report upon the circumstances of all the districts for which he acts, it is essential that he should (a) give separately for each district the statistics which he is required to furnish, and (b) include in the Report an index enabling references to the several districts to be readily traced.

#### HOME OFFICE FORM 572

6. It is the duty of the Medical Officer of Health of every Council of a borough or county district, under section 128 of the Factories Act, 1937, to report specifically in his Annual Report on the administration of, and furnish the prescribed particulars with respect to, matters under Parts I and VIII of that Act which are administered by the Council.

7. Five copies of a Form (Form 572) on which the prescribed particulars can be returned, will be forwarded later in the year,\* to be handed to the Medical Officer of Health for completion.

One copy of the Form should be filled up by the Medical Officer of Health and forwarded to the Home Office, addressed to The Under Secretary of State (Statistical Branch), Home Office, Great Westminster

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\* Except to Clerks of County Councils.

House, Horseferry Road, London, S.W.1 *in advance* of the report referred to in section 128 of the Act.

Copies of the completed Form should be sent to the Local Authority, to the County Council, and to this Department, and the remaining copy should be retained by the Medical Officer of Health.

#### SUPPLY OF COPIES

8. I am to request that the following arrangements may be made for the supply of copies of the Annual Report :—

- (a) \* Six copies should be sent to the Secretary, Ministry of Health, Whitehall, S.W.1. These copies are required in addition to any copies which the Medical Officer of Health may desire to send to the Chief Medical Officer or other officers of the Department on his own initiative ;
- (b) One copy should be sent to The Under-Secretary of State (Statistical Branch), Home Office, Great Westminster House, Horseferry Road, London, S.W.1 ;
- (c) If the Council are a Local Supervising Authority under the Midwives Acts, one copy should be sent to The Secretary, Central Midwives Board, 23, Great Peter Street, London, S.W.1.

9. A copy of this circular has been transmitted to the Medical Officer of Health.

I am, Sir,

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#### APPENDIX I

##### MATTERS TO BE DEALT WITH IN THE ANNUAL REPORTS OF MEDICAL OFFICERS OF HEALTH FOR 1938

##### SECTION A.—STATISTICS AND SOCIAL CONDITIONS OF THE AREA—*see also* Appendix II

(*All Medical Officers of Health*)

Area (in acres).

Registrar-General's estimate of resident population, mid-1938.

Number of inhabited houses (end of 1938) according to Rate Books. (This does not apply to County Councils.)

Rateable value and sum represented by a penny rate.

Social conditions, including the chief industries carried on in the area, and the extent of unemployment.

Extracts from vital statistics of the year, which should be given in the following form and should relate to the net births and deaths *after correction for inward and outward transfers as furnished by the Registrar-General.*

				Total. M. F.		
Live Births	{	Legitimate	-		{	Birth Rate per 1,000 of the estimated resident population .....
		Illegitimate	-			Rate per 1,000 total (live and still) births .....
Stillbirths	-	-	-			Death Rate per 1,000 of the estimated resident population .....
Deaths	-	-	-			

\* In the case of Counties and County Boroughs it would be convenient if an additional copy could be sent.

Deaths from puerperal causes (Headings 29 and 30 of the Registrar-General's Short List) :—

	Deaths.	Rate per 1,000 total (live and still) births.
No. 29 Puerperal sepsis — — —	.....	.....
No. 30 Other puerperal causes — — —	.....	.....
Total — — — — —	.....	.....

Death Rate of Infants under one year of age :—

All infants per 1,000 live births .....	
Legitimate infants per 1,000 legitimate live births .....	
Illegitimate infants per 1,000 illegitimate live births ...	

Deaths from Cancer (all ages) .....	
„ Measles (all ages) .....	
„ Whooping Cough (all ages) .....	
„ Diarrhoea (under 2 years of age) .....	

Particulars of any unusual or excessive mortality during the year which has received or required comment.

Any causes of sickness or invalidity which have been specially noteworthy in the area during the year; any conditions of occupation or environment which appear to have had a prejudicial effect on health; and any evidence, statistical or otherwise, that unemployment has exercised any significant influence on the health or physique of children or adults.

*The results of the 1931 Census have been published in a series of County Volumes containing tables of population by sex, age and marital condition, housing statistics and other data of value to Medical Officers of Health respecting the social conditions in their areas. Census statistics in respect of areas the boundaries of which have been changed since the date of the Census have been or are being published in a special series of supplementary county census volumes (Part II) upon the completion of each county review under Section 46 of the Local Government Act, 1929.*

*The attention of Medical Officers of Health is also directed to the volumes of the Statistical Review of the Registrar-General (Part I—Medical, Part II—Civil, and the Text Volume) which afford guidance respecting the statistical practice of the Registrar-General and forms of tabulation which might also be undertaken in respect of local areas. (These publications may be ordered direct or obtained through a local bookseller from H.M. Stationery Office, York House, Kingsway, London, W.C.2; the net prices of the latest issues being 6s., 2s. 6d., and 3s., respectively). A synopsis of the contents of these volumes, which demonstrates their usefulness to Medical Officers of Health for study and reference in the compilation of their Annual Reports, is contained in the Circular dated 4th September, 1930, issued by the Chief Medical Officer of the Ministry.*

*Note.*—Much valuable information can be derived from a study of the infectious diseases incidence, and of the general and infant mortality rates calculated for sub-divisions (e.g. Wards) of a Sanitary District. This is done by some Medical Officers of Health, and it would be helpful if the practice were made more general.

#### SECTION B.—GENERAL PROVISION OF HEALTH SERVICES FOR THE AREA

##### 1. (All Medical Officers of Health.)

(i) Give full particulars of the Public Health Officers of the Authority, Medical, Nursing, Sanitary, etc., including in each case information as to their special diplomas or certificates of qualification as well as their offices and duties.

(It would facilitate reference if this list were incorporated at the beginning of the report.)

(ii) Describe any developments or changes in the services provided in the area under the following heads :—

- (a) Laboratory facilities.
- (b) Ambulance facilities. (The Medical Officer of Health should comment on the adequacy of the Ambulance Service or Services in the area and on the arrangements made for their co-ordination.)
- (c) Nursing in the Home.
- (d) Treatment Centres and Clinics, including Clinics solely for diagnosis or consultation.
- (e) Hospitals : Public and Voluntary.

*(In the case of areas other than Counties or County Boroughs, the Medical Officer of Health need deal only with hospitals belonging to the Local Authority and hospitals with which the Local Authority has made arrangements for the admission of patients.)*

## 2. (Medical Officers of Health of Counties and County Boroughs only.)

Report on any developments or alterations during the year in the arrangements for :—

- (i) the administration of the institutional medical services transferred from the late Boards of Guardians under the provisions of the Local Government Act, 1929, or subsequently provided under the Public Health or Local Government Acts.
- (ii) Poor Law Medical Out-Relief, stating in full (a) the number of medical relief districts ; (b) the number of districts included in (a) in which the " open choice " system of medical relief has been introduced ; (c) the number of district medical officers ; (d) the number of officers included in (c) whose whole time is devoted to public health service.
- (iii) Institutional provision for the care of Mental Defectives.

## 3. Maternity and Child Welfare (Medical Officers of Health of Welfare Authorities).

Describe any developments or changes in the services provided under the following heads :—

- (i) Midwifery and Maternity Services.  
*(In the case of Local Supervising Authorities under the Midwives Acts, a description of the provision made for a domiciliary service of midwives in pursuance of the Midwives Act, 1936, should be included.)*
- (ii) Institutional Provision for Mothers or Children.
- (iii) Health Visitors.
- (iv) Child Life Protection.
- (v) Arrangements for Dental, Orthopaedic, etc., cases.

## 4. (Medical Officers of Health of Local Authorities for the Registration, etc., of Nursing Homes.)

- (i) State fully the arrangements made for the supervision of Nursing Homes (including Maternity Homes) and for the discovery of unregistered Homes.
- (ii) State any action taken during the year in regard to unsatisfactory Homes.
- (iii) Note any difficulties which have arisen.
- (iv) In counties, the Medical Officer of Health should include a list of the Councils of county districts to whom powers have been delegated under Section 194 of the Public Health Act, 1936, or earlier provisions, showing, in each case, what reservations or conditions, if any, have been attached.

## SECTION C.—SANITARY CIRCUMSTANCES OF THE AREA

1. *(All Medical Officers of Health except those of Metropolitan Boroughs. County Medical Officers of Health will normally not report in detail on these matters but should comment on any points of importance to which it is desirable*

that attention should be drawn, including a statement of any action taken by the County Council in pursuance of Section 57 of the Local Government Act, 1929, or Section 307 or 320 of the Public Health Act, 1936.)

(i) *Water*.—Particulars of any new sources of public water supply, any important extension of mains, and action taken in respect of any form of contamination. State whether the supply has been satisfactory (a) in quality, (b) in quantity. Where the District has a piped supply, state whether the water is controlled by bacteriological examination, and, if so, how often the examinations are made, and give a statement of the results obtained during the year. Failing bacteriological control, the results of any chemical analyses made during the year should be given.

(ii) *Drainage and Sewerage*.—Particulars of any important extension of sewerage, and of progress made in improving the character and sufficiency of the arrangements for drainage, sewerage and sewage disposal in all parts of the area.

2. (All Medical Officers of Health.)

*Rivers and Streams*.—Any action taken to check the pollution of rivers or streams in the area.

3. (All Medical Officers of Health. County Medical Officers of Health will not normally report in detail on these matters but should comment on any points of importance to which it is desirable that attention should be drawn.)

(i) *Closet Accommodation*.—Particulars of conversion from conservancy systems, and, where closets on the conservancy system remain in populous and closely-built centres, statements of the number converted to the water-carriage system during recent years, and of the number of closets of each type remaining at the end of the year.

(ii) *Public Cleansing*.—Particulars of any extension or improvement during the year in the arrangements for public cleansing (refuse collection and disposal, cesspool cleansing, etc.).

(iii) *Sanitary Inspection of the Area*.—Include the Tabular Statement furnished by the Sanitary Inspector (or Sanitary Inspectors) under Article 27 (18) of the Sanitary Officers (Outside London) Regulations, 1935, or Article 19 (15) of the Sanitary Officers Order, 1926.

(iv) *Shops and Offices*.—Particulars of any action taken during the year under the provisions of the Shops Act, 1934, relating to ventilation and temperature of shops and to sanitary conveniences, and under the Public Health Act, 1936, respectively. Regarding the latter, attention is drawn to pages 3 and 4 of Circular 1600 dated 1st May, 1937.

(v) *Camping Sites*.—The following particulars should be given :—

(1) The number of sites in the area which were used for camping purposes during 1938.

(2) The number of camping sites in respect of which licences have been issued by the local authority under Section 269 of the Public Health Act, 1936.

(3) The estimated maximum number of campers resident in the area at one time during the summer season, 1938.

(vi) *Smoke Abatement*.—Particulars of any action of any kind taken during the year with a view to the abatement of nuisance from smoke in the area. Particulars also of any co-operative action with industry will be of value.

(vii) *Swimming Baths and Pools*.—Brief particulars of any (a) public, (b) privately owned swimming baths or pools open to the public, and action taken to ensure the satisfactory condition of the water. If there are no such baths in the area, this should be stated.

(viii) *Eradication of bed bugs*.—Particulars of the action taken for the eradication of bed bugs, including information as to :—

(1) The number of (a) Council houses, (b) other houses, (i) found to be infested, (ii) disinfested ;

(2) The methods employed for freeing infested houses from bed bugs, and the name of the fumigant and/or insecticide used ;

- (3) The methods employed for ensuring that the belongings of tenants are free from vermin before removal to Council houses ;
- (4) Whether the work of disinfection is carried out by the Local Authority or by a contractor ;
- (5) The measures taken by way of supervision or education of tenants to prevent infestation or re-infestation after cleansing.

4. *(All Medical Officers of Health.)*

*Schools.*—The sanitary condition and water supply of schools should be reported on ; the action taken in respect of infectious diseases among school children, with special reference to the means taken to prevent the spread of such diseases (cf. Memorandum on Closure of and Exclusion from School, 1927).

#### SECTION D.—HOUSING

*(All Medical Officers of Health other than those of Counties.)*

In order that the particulars may be accurately given, the several heads should be read as a whole before the form below is filled up, and care should be taken to avoid duplication ; for example, a defective house remedied twice during the year should be counted once only.

Item 4 reproduces the information which Medical Officers are required to furnish to the Minister in connection with the overcrowding operations under Part IV of the Housing Act, 1936. These provisions, in general, take effect after the "appointed day" fixed by the Minister for a particular area, and in some cases it may not be possible for Medical Officers to furnish a normal return for the current year. The Minister would be glad, however, if they would, where a normal return cannot be made, give such statistical and other information relating to overcrowding as is available such as, for example, the number of cases of overcrowding in houses owned by a Local Authority which have been relieved during the year, the number of overcrowding cases which have been relieved in the course of slum clearance operations, etc.

1. *Inspection of Dwelling-houses during the Year :—*

- (1) (a) Total number of dwelling-houses inspected for housing defects (under Public Health or Housing Acts) - - - - -
- (b) Number of inspections made for the purpose - - - - -
- (2) (a) Number of dwelling-houses (included under sub-head (1) above) which were inspected and recorded under the Housing Consolidated Regulations, 1925 and 1932 - - - - -
- (b) Number of inspections made for the purpose - - - - -
- (3) Number of dwelling-houses found to be in a state so dangerous or injurious to health as to be unfit for human habitation - - - - -
- (4) Number of dwelling-houses (exclusive of those referred to under the preceding sub-head) found not to be in all respects reasonably fit for human habitation - - - - -

2. *Remedy of Defects during the Year without Service of formal Notices :—*

Number of defective dwelling-houses rendered fit in consequence of informal action by the Local Authority or their officers - - - - -

3. *Action under Statutory Powers during the Year :—*

(a).—Proceedings under sections 9, 10 and 16 of the Housing Act, 1936 :

- (1) Number of dwelling-houses in respect of which notices were served requiring repairs - - - - -
- (2) Number of dwelling-houses which were rendered fit after service of formal notices :—
  - (a) By owners - - - - -
  - (b) By Local Authority in default of owners - - - - -



## (b).—Proceedings under Public Health Acts :

- (1) Number of dwelling-houses in respect of which notices were served requiring defects to be remedied — — — — —
- (2) Number of dwelling-houses in which defects were remedied after service of formal notices :—
  - (a) By owners — — — — —
  - (b) By Local Authority in default of owners

## (c).—Proceedings under sections 11 and 13 of the Housing Act, 1936 :

- (1) Number of dwelling-houses in respect of which Demolition Orders were made — — —
- (2) Number of dwelling-houses demolished in pursuance of Demolition Orders — — —

## (d).—Proceedings under section 12 of the Housing Act, 1936 :

- (1) Number of separate tenements or underground rooms in respect of which Closing Orders were made — — — — —
- (2) Number of separate tenements or underground rooms in respect of which Closing Orders were determined, the tenement or room having been rendered fit — — — — —

4. *Housing Act, 1936.—Part IV.—Overcrowding :*—

- (a).—(i) Number of dwellings overcrowded at the end of the year — — — — —
- (ii) Number of families dwelling therein — —
- (iii) Number of persons dwelling therein — —
- (b).—Number of new cases of overcrowding reported during the year — — — — —
- (c).—(i) Number of cases of overcrowding relieved during the year — — — — —
- (ii) Number of persons concerned in such cases —
- (d).—Particulars of any cases in which dwelling-houses have again become overcrowded after the Local Authority have taken steps for the abatement of overcrowding.
- (e).—Any other particulars with respect to overcrowding conditions upon which the Medical Officer of Health may consider it desirable to report.

## SECTION E.—INSPECTION AND SUPERVISION OF FOOD

*(All Medical Officers of Health. It will be necessary, however, for each Medical Officer of Health to make a full report only on the working of those Acts and Orders which are actually administered by his own Council.)*

(a) *Milk Supply.*—Action taken with regard to milk, including inspection of farms and dairies, examination of samples for bacterial content and for tubercle bacilli, and the administration of the Milk and Dairies Order, 1926, and the Milk (Special Designations) Orders, 1936 and 1938.

(b) *Meat and other Foods.*—Action taken with regard to meat and other foods, including inspection of meat, slaughterhouses, shops, stalls and vehicles, and places where food is prepared.

In addition to information about the inspection of meat offered for retail sale, information should also be given about the ante- and post-mortem inspection of animals, together with a table in the form below. The number of each class of animal killed may not always be known but should be stated if possible.

*Carcases Inspected and Condemned*

	Cattle, excluding Cows.	Cows.	Calves.	Sheep and Lambs.	Pigs.
Number killed (if known) --					
Number inspected -- --					
<i>All diseases except Tuberculosis.</i> Whole carcases condemned.					
Carcases of which some part or organ was condemned.					
Percentage of the number inspected affected with disease other than tuber- culosis.					
<i>Tuberculosis only.</i> Whole carcases condemned.					
Carcases of which some part or organ was condemned.					
Percentage of the number inspected affected with tuberculosis.					

If a meat marking scheme under Part III of the Public Health (Meat) Regulations, 1924, is in force, particulars of the action taken under it should be given.

(c) *Adulteration, etc.*—Action taken under the Food and Drugs (Adulteration) Act, 1928,\* the Artificial Cream Act, 1929, the Public Health (Condensed Milk) Regulations, 1923 and 1927, the Public Health (Dried Milk) Regulations, 1923 and 1927, and the Public Health (Preservatives, etc., in Food) Regulations, 1925 to 1927.

(d) *Chemical and Bacteriological Examination of Food.*—Laboratories at which such work is carried out and the nature of the work done.

(e) *Nutrition.*—Have any steps been taken to increase the knowledge of the public on the subject and bring to their minds the importance of adequate nutrition, especially for children, by means of lectures, films, etc.? Particulars of any special investigation which has been made on the subject of nutrition should be given.

(f) *Shell-fish (Molluscan).*—Information with regard to any shell-fish beds or layings which may be in the district (specifying the kinds of shell-fish), and stating whether the layings are, in the opinion of the Medical Officer of Health, liable to pollution, and whether any action has been taken under the Public Health (Shell-fish) Regulations, 1934, or the Public Health (Cleansing of Shell-fish) Act, 1932.

Any available information on the following points :—

- (i) the places to which shell-fish taken from layings in the district are sent to be marketed ;
- (ii) the layings from which shell-fish (specifying the kinds of shell-fish) which may be marketed in the district, are derived.

#### SECTION F.—PREVALENCE OF, AND CONTROL OVER, INFECTIOUS AND OTHER DISEASES

##### 1. (*Medical Officers of Health of Counties only.*)

Information should be given as to any action taken or advised under Section 185 of the Public Health Act, 1936, or otherwise, with the object of

\* See now the Food and Drugs Act, 1938, p. 153.

securing that the hospital accommodation in the county available for cases of infectious disease is co-ordinated and used to the best advantage. Where a scheme under that Section or under Section 63 of the Local Government Act, 1929, has been approved by the Minister, particulars should be given regarding any action taken to implement the scheme.

2. (*All Medical Officers of Health except those of Counties, but County Medical Officers of Health should comment on outstanding points of importance to which it is considered desirable that attention should be drawn, although it will not normally be necessary that they should report in detail on those matters.*)

The prevalence of notifiable infectious diseases during the year should be reviewed, and noteworthy facts as to the source or spread of infection should be recorded. Such matters as the clinical type of and diffusion of diphtheria or cerebro-spinal fever, the prompt use of diphtheria anti-toxin or anti-meningococcus serum, the observed relation between various forms of streptococcal infection (scarlet fever, sore throat occurring without a rash, and puerperal fever) should be noted, as well as the experience in the area in regard to the diseases notifiable under the Regulations of the 19th October, 1927, or, in London, under the Regulations of the 22nd December, 1927, *i.e.* pneumonia, malaria and dysentery.

The Report should refer to any action taken or advised with the object of securing that the hospital accommodation available for cases of infectious disease, whether notifiable or not notifiable, is utilised to the best advantage. Action taken to shorten the period of stay of uncomplicated cases of scarlet fever, or to replace hospital treatment in suitable instances by nursing and supervision at home, should be stated. Non-notifiable acute infectious diseases, notably influenza, should also be reported upon so far as the available information enables this to be done. New methods for the selection of individual cases for admission to hospital, or any new decision as to the admission of cases of diseases such as measles or whooping cough, should be noted. The extent to which school intimations of disease are utilised should be stated.

The Report should specify any action taken to provide artificial immunization, particularly against diphtheria, in hospitals, residential institutions or schools, at special clinics, or otherwise. The names of the diphtheria prophylactics used should be stated. The numbers of (a) pre-school children and (b) school children immunized during the year should be shown separately. Reference should also be made to any local action taken in regard to the use of measles serum for prophylaxis or attenuation.

Other diseases which have received special attention should be referred to, *e.g.* locally-contracted anthrax, epidemic jaundice, rheumatic fever, undulant fever, glandular fever or psittacosis.

#### *Notifiable Diseases during the Year 1938*

The Report should include particulars of the incidence of notifiable diseases (other than tuberculosis) in the area during the year 1938, which should be set out in the following form:—

Disease.	Total Cases Notified.*	Cases admitted to Hospital.	Total Deaths.
Smallpox - - - - -			
Scarlet Fever - - - - -			
Diphtheria - - - - -			
Enteric Fever (including Paratyphoid) -			
Puerperal Fever † - - - - -			
Puerperal Pyrexia - - - - -			
Pneumonia - - - - -			
Other diseases generally notifiable (specify disease) - - - - -			
Other diseases notifiable locally (specify disease) - - - - -			

\* An analysis of the total notified cases under the following age-groups should be given: Under 1 year, 1-, 2-, 3-, 4-, 5-, 10-, 15-, 20-, 35-, 45-, 65 and over.

† In London only.

3. (*Medical Officers of Health of Counties and County Boroughs only.*)*Cancer*

Alterations, improvements or other developments in the availability of facilities for the diagnosis and treatment of cancer in the area which have been effected during the year, whether at the instance of voluntary hospitals or Local Authorities, should be specified. Notes on the adequacy, or otherwise, of present facilities and on any action thought necessary to remedy deficiencies would be valuable. Reference should be made to any local investigation or action undertaken on the lines suggested in the Ministry's series of Circulars on Cancer. The deaths from cancer in the area should be shown by age distribution and in accordance with the *Note* on page 12 [p. 329 of this volume]. In the case of Counties the aggregates of urban and rural areas should be given.

4. (*All Medical Officers of Health.*)(a) *Prevention of Blindness*

Particulars should be given of any action taken under Section 176 of the Public Health Act, 1936, for the prevention of blindness or for the treatment of persons suffering from any disease or injury to the eyes.

(b) *Tuberculosis*

Particulars should be given of any action taken under the Public Health (Prevention of Tuberculosis) Regulations, 1925 (relating to persons suffering from pulmonary tuberculosis employed in the milk trade), or under Section 172 of the Public Health Act, 1936 (relating to the compulsory removal to hospital of persons suffering from tuberculosis).

5. (*Medical Officers of Health of non-County Boroughs, Urban and Rural Districts only.*)*Tuberculosis**New Cases and Mortality during 1938 \**

Particulars of new cases of tuberculosis and of deaths from the disease in the area during 1938 should be given in the Report in the following form :—

Age Periods.					New Cases.†				Deaths.‡			
					Respiratory.		Non-Respiratory.		Respiratory.		Non-Respiratory.	
					M.	F.	M.	F.	M.	F.	M.	F.
0—	—	—	—	—								
1—	—	—	—	—								
5—	—	—	—	—								
15—	—	—	—	—								
25—	—	—	—	—								
35—	—	—	—	—								
45—	—	—	—	—								
55—	—	—	—	—								
65 and upwards	—	—	—	—								
Totals	—	—	—	—								

\* (1) Also specify the ratio of non-notified tuberculosis deaths to total tuberculosis deaths, and add a note as to the efficiency of notification of tuberculosis in the area, and the action taken, if any, including particulars of any proceedings taken in cases of wilful neglect or refusal to notify.

(2) If there is evidence of excessive incidence of, or mortality from, tuberculosis in any particular occupation in the area, a note on the subject should be included.

† All *primary* notifications should be included, and also any other new cases of tuberculosis which came to the knowledge of the Medical Officer of Health during the year.

‡ Deaths occurring in the district amongst temporary residents, which are transferred to another district should not be included, but deaths occurring outside the district amongst persons normally resident in the district should be included (*see* returns of transferable deaths furnished by the Registrar-General). Subject to this, the figures in the table should relate to the total deaths in the district during the year.

## APPENDIX II

*Statistics provided by the Registrar-General*

Immediately the figures for the year 1938 are available, the Registrar-General will furnish for the use of the Medical Officers of Health of all Counties, Metropolitan Boroughs, County Boroughs and County Districts the following local statistics in respect of their individual areas together with certain national statistics for the country as a whole. Statistics of Counties and County Boroughs will be issued to the appropriate Medical Officer direct and those destined for district officers will be transmitted via their respective county officers.

*(1) Local Statistics.*

*Population.*—Estimated resident population as at the middle of the year.

*Births and Deaths.*—The numbers registered in the calendar year, modified by inward and outward residence transfers and classified as follows:—

Live Births and Stillbirth—by sex and legitimacy.

Deaths—by sex and the 36 divisions of the Registrar-General's Short List of Causes.

Deaths of infants under 1 year of age—by sex and legitimacy.

*Notifiable Diseases.*—The number of cases notified of smallpox, scarlet fever, diphtheria, enteric fever, puerperal pyrexia and erysipelas.

As indicated above, each County Medical Officer of Health will receive the statistics in respect of the individual urban and rural areas within the county and he will also be provided with an extended analysis of the deaths in respect of the aggregates of urban and rural areas showing the age distribution for each cause in the Short List.

In respect of Metropolitan Boroughs and County Boroughs also, the analysis of deaths will be similarly extended to show the age distribution for each cause in the Short List.

*(2) National Statistics.*

The national statistics to be supplied will comprise (1) a summary of the vital statistics for England and Wales, London and the respective aggregates of the Great and Smaller Towns, and (2) a statement of the case rates for England and Wales of the notifiable diseases mentioned above.

*Note.*—The Short List of causes used for the analysis of deaths is based upon the classification revised and approved by a recent International Commission (Paris, 1929) and is adopted by the Registrar-General throughout his reports. It is set out on pages xxiv–xxvii of the Manual of the International List of Causes of Death (1931 edition) and in view of the authority of its origin and of the advantages of maintaining comparability in contemporaneous reports it is very desirable that local officers should in their own reports follow the general principles and design of this arrangement.

Where a special tabulation is prepared on the ground that the Short List, or a portion of the Short List, is insufficiently detailed for the purpose of the area, it is recommended that the Short List divisions involved should also be shown and that any more elaborate classification should follow the fuller detailed or intermediate international arrangements set out in the Manual.

Where an area has been subject to a change in boundary during the year, the statistics of births, deaths, and notifiable diseases supplied for the calendar year are composite figures, combining the records of the old area for the portion of the year prior to the date of change and the records of the altered area for the remaining portion of the year. A modified population figure appropriate for use with these mixed records is supplied in addition to the normal estimate of population for the altered area.

Where birth or death rates prepared for inclusion in the Report are based upon figures of population, births or deaths which differ from those supplied by the Registrar-General, it is suggested that the corresponding figures, based upon the Registrar-General's data, should also be included.

It should be noted that the year's death rates for England and Wales as a whole from cancer, tuberculosis (respiratory and other forms), puerperal sepsis and other puerperal causes are published in the Registrar-General's Weekly Return as soon as the data are available (usually early in March) and that individual application for these statistics has thereby been rendered unnecessary. [637]

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## MENTAL HOSPITALS

*See* HOSPITALS; PERSONS OF UNSOUND MIND.

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## MIDWIVES

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Midwives (Certifying Hospitals and Institutions) Order, 1938—	330		

### ORDERS, CIRCULARS AND MEMORANDA

#### MIDWIVES (CERTIFYING HOSPITALS AND INSTITUTIONS) ORDER, 1938

*S. R. & O.*, 1938, No. 147

*February 25, 1938*

94,503

Whereas it is enacted in the proviso to sub-section (1) of Section 6 of the Midwives Act, 1936, that the provisions of the said sub-section shall not apply in the case of a woman who, before the first day of January, 1937, has been certified by the authorities of a hospital or other institution to which the Minister of Health has by order applied the said proviso to have been trained in obstetric nursing and who has given notice in writing to the local supervising authority within the meaning of the Midwives Act, 1902, as amended by any subsequent enactment that she has been so certified :

Now, therefore, the Minister of Health in exercise of his powers under the said proviso and of all other powers enabling him in that behalf hereby orders as follows :—

1. This Order may be cited as the Midwives (Certifying Hospitals and Institutions) Order, 1938, and shall have effect as from the date hereof.
  2. The Interpretation Act, 1889, applies to the interpretation of this order as it applies to the interpretation of an Act of Parliament.
  3. The proviso to sub-section (1) of Section 6 of the Midwives Act, 1936, shall be applied to the hospitals and their institutions named in the schedule hereto.
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## SCHEDULE

Barshaw Municipal Maternity and Child Welfare Hospital, Paisley.  
 City Maternity Home, Lincoln.  
 Dundee Maternity Hospital, Dundee.  
 Edinburgh Lying-in Institution, formerly of 58, Lauriston Place, and  
 3, Chalmers Street, Edinburgh.  
 General Nursing Association, formerly of 23, Scotia Street, Glasgow.  
 Maternity Nursing Association of the Royal Northern Hospital, Holloway,  
 London, N.7.  
 Saint Faith's Maternity Home, Leeds.  
 Scottish Training College for Nurses, formerly of New City Road, and  
 Dundas Street, Glasgow.  
 The Mothers' Hospital of The Salvation Army, Lower Clapton Road,  
 Clapton, London, E.5.  
 The Portsmouth Municipal Maternity Hospital Training School, Ports-  
 mouth.  
 The Rotunda Hospital, Dublin. [638]

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## MIDWIVES (CERTIFYING HOSPITALS AND INSTITUTIONS) ORDER (NO. 2), 1938

*S. R. & O., 1938, No. 689*

*July 20, 1938*

96979

Whereas it is enacted in the proviso to sub-section (1) of Section 6 of the Midwives Act, 1936, that the provisions of the said sub-section shall not apply in the case of a woman who, before the first day of January, 1937, has been certified by the authorities of a hospital or other institution to which the Minister of Health has by order applied the said proviso to have been trained in obstetric nursing and who has given notice in writing to the local supervising authority within the meaning of the Midwives Act, 1902, as amended by any subsequent enactment that she has been so certified:

Now, therefore, the Minister of Health in exercise of his powers under the said proviso and of all other powers enabling him in that behalf hereby orders as follows:—

1. This order may be cited as the Midwives (Certifying Hospitals and Institutions) Order (No. 2), 1938, and shall have effect as from the date hereof.

2. The Interpretation Act, 1889, applies to the interpretation of this order as it applies to the interpretation of an Act of Parliament.

3. The proviso to sub-section (1) of Section 6 of the Midwives Act, 1936, shall be applied to the hospitals and other institutions named in the schedule hereto, but in respect of—

(a) the hospital or other institution named in Part II thereof, only in respect of certificates given during a period in which Agnes Parkinson was matron of the said hospital or other institution; and

- (b) the hospital or other institution named in Part III thereof, only in respect of certificates given during a period in which the said hospital or other institution was under the superintendence of Lily Cooper and Lilian A. Fulcher :

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## SCHEDULE

### PART I

Blackpool Corporation Maternity Wards.  
St. Mary's Hospitals, Manchester.  
The British Lying-In Hospital, Endell Street, London, W.C.2.  
The Home for Mothers and Babies, Wood Street, Woolwich.

### PART II

St. Margaret's Midwifery Home, New Cross, London, S.E.

### PART III

Tottenham Nursing Institute and Training School, Seven Sisters Corner,  
London, N. [639]

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## MILK AND DAIRIES

*See* FOOD AND DRUGS.

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## MISFEASANCE AND NONFEASANCE

*See* ACTIONS BY AND AGAINST LOCAL AUTHORITIES.

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# NATIONAL HEALTH AND UNEMPLOYMENT INSURANCE

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STATUTES :—		(Approved Societies) Regula-	
Unemployment Insurance Act, 1938	333	tions, 1938	334
ORDERS, CIRCULARS AND MEMO-		CASES :—	
RANDA :—		M'Geachy v. Department of	
National Health Insurance		Health for Scotland, [1938] S. C.	
		282	335

## STATUTES

### THE UNEMPLOYMENT INSURANCE ACT, 1938

(1 & 2 Geo. 6, c. 8.)

*An Act to extend the powers of education authorities with respect to courses of instruction provided under the Unemployment Insurance Act, 1935; to render certain employments insurable in like manner as employment in agriculture; to amend the provisions of the said Act relating to the discharge of the liabilities of the Unemployment Fund and to Treasury advances to that Fund; and to amend the law as to the insurance of discharged seamen, marines, soldiers and airmen.*  
[640] [17th February, 1938.]

**1. Extension of powers of education authorities with regard to courses of instruction.**—The functions of education authorities in providing courses of instruction under section seventy-six of the Unemployment Insurance Act, 1935, (hereinafter referred to as “the principal Act”) shall include power to provide for persons attending such courses—

- (a) meals in the like circumstances and subject to the like conditions as meals may, under sections eighty-two to eighty-five of the Education Act, 1921, be provided by local education authorities for elementary education for children in attendance at public elementary schools in their area;
- (b) during the hours during which instruction is being given, milk and biscuits free of charge subject to such conditions as may be approved by the Minister of Labour (hereinafter referred to as “the Minister”):

Provided that the said powers shall not be exercised by an education authority except in accordance with proposals submitted to the Minister by the authority and approved by him, and the Minister shall not approve any such proposals unless they are in accord with schemes made by him with the consent of the Treasury. [641]

For s. 76 of the principal Act, see 28 Halsbury's Statutes 546.

For the Education Act, 1921, ss. 82—85, see 7 Halsbury's Statutes 175, 176.

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**8. Expenditure out of moneys provided by Parliament.**—There shall be defrayed out of moneys provided by Parliament—

- (a) any sums by which the expenses of the Minister under the principal Act, or any education grants under any other Act, are increased by reason of the additional functions conferred by this Act on education authorities (without prejudice to the power to make grants towards such expenses out of the Unemployment Fund under section eighty of the principal Act); and
- (b) any increase attributable to the passing of this Act in the sums payable out of moneys provided by Parliament by virtue of sections twenty-one, ninety-four, ninety-five, or ninety-six of the principal Act. [642]

For s. 80 of the principal Act, see 28 Halsbury's Statutes 549; and for ss. 21, 94, 95 and 96 of that Act, see *ibid.* 518, 555—559.

**9. Short title and citation.**—This Act may be cited as the Unemployment Insurance Act, 1938, and this Act and the Unemployment Insurance Acts, 1935 and 1936, may be cited together as the Unemployment Insurance Acts, 1935 to 1938. [643]

## ORDERS, CIRCULARS AND MEMORANDA

### NATIONAL HEALTH INSURANCE (APPROVED SOCIETIES) REGULATIONS, 1938

March 11, 1938

\* \* \* \* \*

217. Any offices or other buildings under the control of a Government Department (including offices or buildings occupied by or in respect of an employment exchange) or belonging to or under the management of a local authority may be used, subject to the consent of the Government Department or of the local authority concerned, on such terms as may be agreed upon with regard to payment or otherwise as a place in which meetings of a society or branch or any committee of such society or branch may be held. [644]

\* \* \* \* \*

## CASES

*National Health Insurance—Employment—Contract of Service—Casual Work.*

Employments within National Health Insurance Act, 1924, include employment under any contract of service whether for a money payment or not, and, except in so far as excluded by special order, employment under any local authority.

In consequence of the prevalence of unemployment in a city a large number of men were in receipt of able-bodied relief, and the municipal

corporation, who were also public assistance authority, made arrangements whereby men in receipt of able-bodied relief were allowed to work as voluntary workers in the corporation's departments when work of a casual nature was available. In addition to the opportunity which the work afforded the men of keeping physically fit, the corporation held out as an inducement to those who undertook the work the prospect of preferential selection for vacancies in regular corporation employment. Men who were prepared to do this work received no payment for it, but continued to receive relief from the public assistance committee. The departments to which the men were assigned exercised control over them when working, but the men could not be required to work as a condition of receiving relief. The widow of a man who had worked under these arrangements in the corporation's electricity department having applied for determination of the question whether her husband was employed by the corporation within the 1924 Act :—

*Held*: he was not employed under a contract of service, and was not an employed person within National Health Insurance Acts.—*M'GEACHY v. DEPARTMENT OF HEALTH FOR SCOTLAND*, [1938] S. C. 282. [645]

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## NEGLIGENCE

*See* ACTIONS BY AND AGAINST LOCAL AUTHORITIES.

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## NON-COMPULSORY ACQUISITION OF LAND

*See* LAND, ACQUISITION, SALE, ETC., OF.

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## NON-PROVIDED SCHOOLS

*See* EDUCATION.

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## NURSING HOMES

*See* HOSPITALS.

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## OLD AGE PENSIONS

*See* BLIND PERSONS; PERSONS OF UNSOUND MIND.

## OVERCROWDING

*See* HOUSING.

## OXFORD, CITY OF

*See* AREAS OF LOCAL GOVERNMENT.

## PERSONS OF UNSOUND MIND

	PAGE	
CASES :—		
<i>Re</i> T. R. M., [1938] 4 All E. R.		Committee of Visitors of
194, C. A. - - - -	336	Glamorgan County Mental
<i>R. v.</i> Minister of Health, <i>Ex p.</i>		Hospital, [1938] 4 All E. R. 32,
		C. A. (see p. 407, <i>post</i> ).

## CASES

*Rate-aided Patient—Maintenance—Old Age Pension—Public Assistance Officer Appointed Receiver—Form of Order—Widows', Orphans' and Old Age Contributory Pensions Act, 1936 (c. 33), s. 21 (1), Sched. III.*

A patient in a rate-aided institution attained the age of seventy years, and became entitled to an old age pension. The master in lunacy made the usual order appointing the appropriate public assistance officer, in effect, to be receiver of the pension and to accumulate the same. The order gave a charge to the county council for any sum then due, and future sums becoming due, to them, but this charge was not to be enforceable without the leave of the master until the death of the patient. It was contended, on behalf of the county council, that the order should have made the pension immediately available :—

*Held* : the order was not only one which the master had jurisdiction to make, but was also a wise and just one in the circumstances, and there was no reason for interfering with it.—*Re* T. R. M., [1938] 4 All E. R. 194; 159 L. T. 561; 55 T. L. R. 56; 82 Sol. Jo. 889, C. A



## PUBLIC ASSISTANCE

STATUTES :—	PAGE	ORDERS, CIRCULARS AND MEMORANDA :—	PAGE
Poor Law (Amendment) Act,		Finance Act, 1938 : Circular	
1938 - - - - -	337	1746 - - - - -	338
		Poor Law (Amendment) Act,	
		1938 : Circular 1698 - - -	340

## STATUTES

## THE POOR LAW (AMENDMENT) ACT, 1938

(1 &amp; 2 Geo. 6, c. 23.)

*An Act to authorise the payment by Poor Law authorities of personal allowances to inmates of the age of sixty-five and over of Poor Law institutions. [647]* [17th May, 1938.]

**1. Power of Poor Law authorities to grant personal allowances to certain inmates aged sixty-five or upwards of Poor Law institutions.**—The enactments relating to the relief of the poor shall have effect as if amongst the powers conferred on councils of counties and county boroughs there was included power to grant a personal allowance not exceeding two shillings per week to any person in receipt of relief from them in a workhouse or other Poor Law institution, being a person aged sixty-five years or upwards. [648]

For the main enactments relating to the relief of the poor, see 12 Halsbury's Statutes 901 *et seq.*

**2. Application to Scotland.** [649]

**3. Short title and citation.**—This Act may be cited as the Poor Law (Amendment) Act, 1938, and the Poor Law Acts, 1930 and 1934, and this Act, as it applies to England, may be cited as the Poor Law Acts, 1930 to 1938. [650]

## ORDERS, CIRCULARS AND MEMORANDA

## FINANCE ACT, 1938

*Circular 1746**November 14, 1938*

SIR,

1. I am directed by the Minister of Health to state that he has been asked by the Board of Inland Revenue to invite the attention of Public Assistance Authorities to Section 21 of the Finance Act, 1938, which is in the following terms :—

“ If any person proves that during any year of assessment he has a relative living with him—

(a) who in that year has been denied wholly or in part unemployment allowance under Part II of the Unemployment Act, 1934, or public assistance, on the ground that the relative was being maintained wholly or partly by him ; and

(b) in respect of whom he is entitled to no deduction for that year under section twenty-two of the Finance Act, 1920 ;

he shall be entitled to a deduction from the amount of tax with which he is chargeable for that year equal to tax at the standard rate on the amount deemed to have been paid by him in that year towards such maintenance but not exceeding tax on twenty-five pounds.”

2. As the Council will observe, the burden of proof rests upon a claimant to show that the relative in respect of whom he claims relief from income tax has been denied public assistance, but the Board of Inland Revenue consider that it is desirable that uniform arrangements should be made for establishing the essential facts so far as the question of denial of public assistance is concerned.

3. The Board have suggested a procedure whereby a claimant, on intimating his claim to income tax allowance under the section, should be asked to apply to the Public Assistance Authority on a form supplied to him by H.M. Inspector of Taxes for a certificate of the pertinent facts, at the same time requesting them to forward the certificate direct to the Inspector. The form of request and certificate is printed as an appendix to this Circular.

4. The Minister concurs in the procedure suggested, and he trusts that the Council and their officers will assist the Board of Inland Revenue to establish the facts on claims made under the section by co-operating with the Board in the manner proposed.

I am, Sir,

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## APPENDIX

## INCOME TAX

I.R. Reference

## FINANCE ACT, 1938, SECTION 21

*Application for Certificate by Public Assistance Officer*

To the Public Assistance Officer.

.....

Please complete the certificate below in respect of \*.....

.....and forward this form to H.M.

Inspector of Taxes.....

.....Signature (in full).

.....Full address.

\* Full name of applicant for public assistance to be inserted here.

## CERTIFICATE

I HEREBY CERTIFY that.....of

.....has been

an applicant for Public Assistance, and that—

\* (a) on....., 19 , the applicant was

wholly denied assistance on the ground of non-destitution, the

applicant being deemed to be maintained by .....

..... of the above address, to the extent

of † ..... a week.

\* (b) in the half-year ended 5 October/April, 19 , the applicant

received assistance but was in part denied assistance on the

ground that he/she was maintained partly by.....

..... of the above address, who paid or was

deemed to have paid ‡ .....pounds towards the

maintenance of the applicant during that period.

.....(Signature).

Public Assistance Officer for.....

.....(Date).

\* Delete whichever paragraph is inapplicable.

† Amount to be written in words.

‡ Amount to be written in words. If more than £25, it will be sufficient to insert "over twenty-five."

## POOR LAW (AMENDMENT) ACT, 1938

*Circular 1698*

*June 9, 1938*

SIR,

1. I am directed by the Minister of Health to draw the attention of the Council to the Poor Law (Amendment) Act, 1938, which received the Royal Assent on the 17th May, and came into operation forthwith.

2. The Act empowers a Public Assistance Authority to grant pocket money at a rate not exceeding 2s. per week to any person aged 65 years or upwards who is receiving relief from them in a Poor Law Institution.

3. The Minister understands that some difficulties in the management of Poor Law Institutions have, on occasion, arisen by reason of the fact that certain inmates have had a little money to spend, for example by retention of some small amount out of a pension continuing to be payable, whilst other inmates have had no such resource. The provisions of the new Act will enable the Council, if they think fit, to place all inmates, aged 65 or over, in their Poor Law Institutions, in the position of having a small weekly sum of money to spend on additional comforts.

4. I am to request that any payments made under the Act may be shown separately in the accounts of the Council.

5. An additional copy of this Circular is enclosed for the use of the Financial Officer of the Council.

I am, Sir,

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[652]

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## PUBLIC AUTHORITIES PROTECTION ACT

*See ACTIONS BY AND AGAINST LOCAL AUTHORITIES; EDUCATION.*

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## PUBLIC SERVICE VEHICLES

*See ROAD TRAFFIC.*

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## PUBLIC TRANSPORT

*See AERODROMES, AIR NAVIGATION AND AIRCRAFT;  
ROAD AND RAIL TRAFFIC.*

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## RAIL TRAFFIC

See ROAD AND RAIL TRAFFIC.

## RATE COLLECTION

See RATES AND RATING.

## RATE-AIDED PERSONS OF UNSOUND MIND

See PERSONS OF UNSOUND MIND.

## RATES AND RATING

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Rating and Valuation (Postpone- ment of Valuations) Act, 1938	341	King Edward VII Welsh National Memorial Associa- tion v. South-East Glamorgan Assessment Committee (1938) 102 J. P. 105, D. C. —	349
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## STATUTES

### THE RATING AND VALUATION (POSTPONEMENT OF VALUATIONS) ACT, 1938

(1 & 2 Geo. 6, c. 19.)

*An Act to postpone the making of certain new valuation lists under the Rating and Valuation Act, 1925, and for purposes connected therewith.* [653] [13th April, 1938.]

1. Postponement of third valuation till 1941.—(1) Notwithstanding anything in section nineteen of the Rating and Valuation Act, 1925,

the third new valuation list under that Act shall be made so as to come into force on the first day of April nineteen hundred and forty-one, and thereafter new valuation lists thereunder shall be made from time to time so that the interval between the dates on which one valuation list and the next succeeding list respectively come into force shall be a period of five years :

Provided that the Minister shall have the like powers with respect to the alteration of the dates fixed by this subsection as are by the provisos to subsection (1) of the said section nineteen conferred on him with respect to the dates fixed by that subsection. [654]

For s. 19 of the Rating and Valuation Act, 1925, see 14 Halsbury's Statutes 644. Under that section the first new valuation list under the Act was to be made so as to come into force either on 1st April, 1928, or on 1st April, 1929, and the second on the 1st April, 1932, 1933, or 1934. Succeeding valuation lists were to be made at intervals of 5 years. The effect of this section is to postpone the date of the third list and to standardise the dates throughout the country, subject to the Minister's powers under the provisos referred to.

(2) Any draft of the said third new valuation list prepared, or prepared and approved, under the said Act before the passing of this Act shall be void, and a rating authority which has before the passing of this Act issued notices under section forty of the said Act requiring returns with a view to the making of the said third new valuation list may to such extent as it thinks fit issue fresh notices thereunder and shall, notwithstanding anything in section twenty-five of the said Act, be under no obligation to take the steps mentioned in the said section twenty-five sooner than appears to it to be expedient having regard to the postponement effected by this section of the date on which the list is to come into force. [655]

For s. 40 of the Act of 1925, see 14 Halsbury's Statutes 668.

(3) Nothing in this section applies to any area where the second new valuation list under the said Act came into force before the year nineteen hundred and thirty-four unless by virtue of an order made by the Minister before the passing of this Act under proviso (a) of subsection (1) of the said section nineteen the third new valuation list would, apart from the provisions of this Act, come into force therein on the first day of October nineteen hundred and thirty-eight. [656]

**2. Short title and citation.**—This Act may be cited as the Rating and Valuation (Postponement of Valuations) Act, 1938, and the Rating and Valuation Acts, 1925 to 1937, and this Act may be cited together as the Rating and Valuation Acts, 1925 to 1938. [657]

## THE RATING AND VALUATION (AIR-RAID WORKS) ACT, 1938

(1 & 2 Geo. 6, c. 65.)

*An Act to provide for relief from rates in respect of air-raid protection works.* [658] [29th July, 1938.]

This Act does not call for detailed annotation. Its purpose is to prevent expenditure on property for the purpose of providing protection against air-raids having the effect of increasing, as in the absence of these provisions it might well do to a substantial extent, the rateable value of the property.



**1. Relief of air-raid protection works from rates.**—(1) In ascertaining under the principal Act the value for rating purposes of a hereditament, no regard shall be had—

- (a) to any room or other part of the hereditament which has been added at any time after the hereditament was first assessed, or was included in the hereditament before it was first assessed, solely for the purpose of affording protection in the event of hostile attack from the air, and which is not occupied or used for any other purpose ;
- (b) to any structural alterations or improvements to the hereditament (not being the addition of any such room or other part as aforesaid) made at any time after the hereditament was first assessed, solely for the purpose of affording such protection as aforesaid. [659]

(2) No person shall, in respect of any period, be liable to pay rates in respect of a hereditament which is intended to be occupied and used solely for the purpose of affording such protection as aforesaid, and which is not occupied or used for any other purpose, or be deemed to be in occupation thereof for rating purposes, and notwithstanding anything in the principal Act no such hereditament shall be included in any rate made in respect of any period. [660]

(3) The fact of any such room or other part of a hereditament as is referred to in paragraph (a) of subsection (1) of this section, or of any such hereditament as is referred to in the last foregoing subsection, having been occupied or used for any purpose other than that of affording such protection as aforesaid shall, as respects a hereditament in the administrative county of London, for the purposes of section forty-seven of the principal Act, be a ground for making and sending to the assessment committee a provisional list and for making a requisition for such a list to be made and sent. [661]

(4) In this Act, the expression “ the principal Act ” means—

- (a) in relation to places outside the administrative county of London, the Rating and Valuation Act, 1925, as amended by any subsequent enactment ; and
- (b) in relation to the administrative county of London, the Valuation (Metropolis) Act, 1869, as amended by any subsequent enactment. [662]

**2. Citation and construction.**—(1) This Act may be cited as the Rating and Valuation (Air-Raid Works) Act, 1938.

(2) The Rating and Valuation Acts, 1925 to 1938, and this Act shall be construed as one, and this Act shall be included amongst the Acts which may be cited together as the Rating and Valuation Acts, 1925 to 1938.

(3) The Rating and Valuation (Metropolis) Acts, 1869 to 1930, and this Act shall be construed as one, and may be cited together as the Rating and Valuation (Metropolis) Acts, 1869 to 1938. [663]

## ORDERS, CIRCULARS AND MEMORANDA

RATING AND VALUATION ACT (PRODUCT OF  
RATES AND PRECEPTS) RULES, 1938 \**S. R. & O., 1938, No. 265**March 31, 1938*

93770

Whereas by subsection (2) of section 9 of the Rating and Valuation Act, 1925, every council of a county is required in any precept issued in respect of any period beginning on or after the 1st day of April, 1929, to state the amount in the pound which they require the rating authority to levy for their purposes, and by subsection (3) of the said section the provisions of the said subsection (2) may be applied to precepts issued by any other authority ;

And whereas by the said subsections every rating authority is required to transmit to every authority having power to issue to that rating authority precepts to which subsection (2) for the time being applies an estimate of the amount, calculated in the prescribed manner, which would be produced in the next financial year by a rate of a penny in the pound levied in the rating area of that authority, and it is further provided that the amount due under any precept so issued shall be ascertained in the prescribed manner ;

And whereas it is desirable, except as hereinafter mentioned, to rescind the Rating and Valuation Act (Product of Rates and Precepts) Rules, 1929, as amended by the Rating and Valuation Act (Product of Rates and Precepts) Amendment Rules, 1933 in view of the repeal of the proviso to paragraph (c) of subsection (2) of section 9 of the Rating and Valuation Act, 1925 ;

And whereas it is provided by subsection (4) of the said section that rules made for the purposes of that section shall make provision with respect to certain specified matters and to any other matters for which it may appear necessary to make provision in order to carry the said section into effect ;

And whereas by section 58 of the said Act it is provided that the Minister of Health, after consultation with any local authority or association of local authorities, with whom consultation appears to him to be desirable, may by rules prescribe anything which by the Act is to be prescribed :

Now, therefore, the Minister of Health, after such consultation as is mentioned above, by virtue of the powers conferred upon him by the said sections 9 and 58, and of all powers enabling him in that behalf, hereby makes the following rules—

1.—(1) These rules may be cited as the Rating and Valuation Act (Product of Rates and Precepts) Rules, 1938, and shall come into operation on the date hereof and shall have effect for the purposes of any precept issued by a precepting authority in respect of a period beginning on or after the 1st day of April, 1937.

(2) In these rules, unless the context otherwise requires—

“ the Act ” means the Rating and Valuation Act, 1925 ;

“ rate ” means a general rate ;

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\* These rules supersede the provisional rules dated the thirty-first day of December, 1937.

"precepting authority" means the council of a county, and any other authority issuing precepts to which the provisions of subsection (2) of section 9 of the Act for the time being apply ;

"product of a penny rate" means the amount produced by a rate of one penny in the pound ;

"poundage" means in relation to any rate the amount assessed by that rate (including any additional item thereof) in respect of each pound of rateable value ;

"gross rate income" means in relation to a rating area, or part of a rating area, and in relation to a financial year, the total of the gross amounts appearing in the rate book as assessed in respect of hereditaments in that area, or part of an area, by the rate or rates (including additional items) made in respect of that year, or any portion thereof, increased by—

(a) the amounts of any payments receivable in respect of that year under section 2 (7) of the Act, or under section 133 of the Lands Clauses Consolidation Act, 1845, as the case may be, and of any contributions made by the Crown ; and

(b) any amounts found during that year to be recoverable under section 36 (2) of the Act, whether by virtue of section 37 (10) of the Act or otherwise, or under or by virtue of section 12 (6) of the Railways (Valuation for Rating) Act, 1930, or in respect of rates previously written off as irrecoverable ;

"cost of collection" means—

(i) in relation to a rating areas as a whole, the net cost of making, collecting and recovering rates during a financial year, including a proper proportion of such expenses as are attributable in part to the matters aforesaid and in part to the making, collection or recovery of special rates, or to other matters, but not including any proportion of any allowances made to owners or occupiers, or any expenses incurred in connection with the preparation of valuation lists ; and

(ii) in relation to a part of a rating area, the sum which bears to the cost of collection in the rating area the same proportion as the total rateable value of that part of the area bears to the total rateable value of the whole area at the commencement of the financial year ;

"loss on collection" means, in relation to a rating area or part of a rating area, and in relation to a financial year, the total amount written off during that year in the rate book as irrecoverable in respect of hereditaments in that area or part, whether in respect of a current rate or in respect of arrears of any previous rate, exclusive of any allowances made to owners or occupiers under section 8 of the Act, but including all other allowances, commissions, and abatements ;

"precept" means a precept which requires a rating authority to levy a rate of a specified poundage ;

"financial officer" means the chief officer charged with the duty of keeping the accounts of a rating authority.

2. The financial officer of every rating authority shall as soon as may be after the close of a financial year calculate in accordance with

the directions hereinafter contained the product of a penny rate during that year in the rating area and, where a precept is issuable by a precepting authority in respect of a portion only of the rating area, the product of a penny rate during that year in such portion.

3. Subject as hereinafter provided, the product of a penny rate in any rating area or in any portion thereof, as the case may be, shall be calculated by deducting from the gross rate income of the financial year the cost of collection and the loss on collection, and by dividing the remainder (which sum is hereinafter referred to as "the total rate product") by the number of pence representing the total poundage of the rate or rates :

Provided that if the poundage of the rate or rates of the financial year is not the same throughout the area or portion, as the case may be, the financial officer shall in the first instance calculate the product of a penny rate separately for each part in which a different poundage has been levied, and the product of a penny rate in the area or portion shall be taken to be the sum of the products of penny rates in the several parts comprised therein.

4. The amount due under a precept shall be taken to be the product of a penny rate in the rating area or in that portion thereof which is included in the area of the precepting authority, as the case may be, multiplied by the number of pence specified in the precept.

5. The financial officer of every rating authority shall as soon as may be after the close of a financial year ascertain, in accordance with the provisions of the last preceding rule, the total amount due in respect of that financial year under the precepts issued by a precepting authority to the rating authority ; and, if the total amount so ascertained to be due exceeds the aggregate of the instalments required by such precepts to be paid on account thereof, the rating authority shall, save as hereinafter provided, forthwith pay the balance to the precepting authority :

Provided that the rating authority, subject to their obligation to pay in full the aggregate of the instalments required by the precepts, may defer payment of any sum not exceeding that which bears to the total amount due under the precepts the same proportion as the amount of arrears carried forward at the close of the financial year to which the precepts relate and for the time being still outstanding bears to the total rate product for that financial year.

6.—(1) The estimate of the product of a penny rate in the next ensuing financial year which a rating authority is required to transmit to a precepting authority before the first day of February in each calendar year shall be made in accordance with the principles of these rules as to the method of ascertaining the product of a penny rate.

(2) The financial officer in so framing the estimate shall take the latest ascertained figures available for the rating area or portion thereof, as the case may be, and shall modify those figures to such extent as appears to him to be necessary having regard to any alteration in total rateable value which may reasonably be anticipated and to any other material circumstances.

7. There shall be included in the accounts to be submitted by a rating authority to the district auditor the calculations required by these rules for the determination of the product of a penny rate in the rating area, or in any part thereof during the financial year and of the amount due under any precept issued to the authority in respect of

that year, or any part thereof; and the auditor's certificate allowing the accounts shall be construed as a certificate that, subject to any amendments made by him, such calculations have been properly and correctly made, and any necessary consequential adjustments shall be made in the accounts between the rating authority and the precepting authority.

8. The Rating and Valuation Act (Product of Rates and Precepts) Rules, 1929, as amended by the Rating and Valuation Act (Product of Rates and Precepts) Amendment Rules, 1933 shall continue to apply to any precept issued in respect of any period ending on or before the 31st day of March, 1937, but subject to such continued application those Rules are hereby rescinded. [664]

\* \* \* \* \*

## RATING AND VALUATION ACT, 1925

*Circular 1669*

*January 7, 1938*

SIR,

### RATING AND VALUATION ACT, 1925

I am directed by the Minister of Health to say that he has had under consideration the modifications rendered necessary or desirable in the Rating and Valuation Act (Product of Rates and Precepts) Rules, 1929, as amended by the Rating and Valuation Act (Product of Rates and Precepts) Amendment Rules, 1933, by reason of the repeal of the proviso to paragraph (c) of subsection (2) of section 9 of the Rating and Valuation Act, 1925, as enacted by section 9 of the Local Government (Financial Provisions) Act, 1937. I am to enclose for the information of the Council copies of new rules which he has made under sections 9 and 58 of the Act of 1925, after consultation with representative associations of local authorities.

Except for the amendments entailed by the repeal of the aforesaid proviso, and the omission of certain other obsolete provisions, the new rules are the same as those of 1929 and 1933 which they supersede. They will operate in respect of precepts for the present and future financial years.

An additional copy of this circular and of the new rules is enclosed for the information of the Chief Financial Officer of the Council. Further copies may be purchased directly from His Majesty's Stationery Office . . . or through any bookseller.

I am, Sir,

\* \* \* \* \*

[665]

## CASES

*Agricultural Hereditament—Land Partly Used for Training Racehorses—Rating and Valuation (Apportionment) Act, 1928 (c. 44), s. 2.*

About 12 acres of land which were owned by the second appellant, and which had formerly been part of an arable farm, had some ten years' ago been laid down to grass and used by the first appellant as a training ground for racehorses from about Christmas until about the beginning of March. The second appellant during the remainder of the year had used the ground for grazing and hay. It was contended that the ground was "kept or preserved mainly or exclusively for purposes of sport or recreation," and was not, therefore, an agricultural hereditament within the meaning of the Rating and Valuation (Apportionment) Act, 1928, s. 2 :—

*Held* : the hereditament was an agricultural hereditament.—JARVIS v. CAMBRIDGESHIRE RURAL ASSESSMENT AREA ASSESSMENT COMMITTEE, DAWSON v. CAMBRIDGESHIRE RURAL ASSESSMENT AREA ASSESSMENT COMMITTEE, [1938] 4 All E. R. 186 ; 82 Sol. Jo. 990, D. C. [666]

*Institution Incorporated for "promotion and advancement of naval and military science and literature"—Supported by Government Grant and Members' Subscriptions—Whether Instituted for the "purposes of science, literature or the fine arts exclusively," and Supported by Voluntary Contributions, so as to be Exempt From Rating—Scientific Societies Act, 1843 (c. 36), s. 1.*

The Scientific Societies Act, 1843, s. 1, provides for the exemption from rates of "any society instituted for purposes of science, literature, or the fine arts exclusively," if "supported wholly or in part by annual voluntary contributions." An institution, established in 1831 and incorporated by Royal Charter in 1860 for the purposes of "the promotion and advancement of naval and military science and literature," was rated as occupier of a hereditament used for carrying into effect its purposes. The institution was supported by an annual Government grant and by members' subscriptions. The activities of the institution were carried out by having a library, a reading-room and lectures, by publishing a journal and by possessing and maintaining a museum. Exemption from rates was claimed under s. 1 of the Act of 1843, but the rating authority contended that the said hereditament was not used for the purposes of science or literature exclusively, that the reading-room, lecture theatre and museum were not used exclusively for the said purposes, that the said hereditament was mainly used for the purposes of naval and military professional art, which were not purposes of science or literature, and that the institution was not supported by voluntary annual contributions :—

*Held* : (i) the words "science and literature" within the meaning of the Scientific Societies Act, 1843, s. 1, included naval and military science and literature ;

(ii) the modes in which the institution carried out its activities were only modes in which the exclusive purposes of science and literature were carried out ;

(iii) the annual Government grant was a voluntary contribution within the meaning of s. 1 of the Act of 1843.—WESTMINSTER CITY COUNCIL v. ROYAL UNITED SERVICE INSTITUTION, [1938] 2 All E. R. 545 ; 82 Sol. Jo. 547 ; 36 L. G. R. 450. [667]



*Rates—Assessment—Licensed Property—"Tied house."*

A firm of brewers, following the usual custom at the present time, instead of letting a public-house to a tenant, put a manager in charge of it. The house was in effect a tied house, and it was admitted that brewers were prepared to pay a higher rent for houses in which a manager could be placed in this way. The rating authority assessed the house at a higher figure, on these grounds. On appeal to quarter sessions, and thence to the Divisional Court, it was held that the principle enunciated in *Bradford-on-Avon Assessment Committee v. White*, [1898] 2 Q. B. 630; 38 Digest 567, 1052, applied as well to a house in which a manager was placed as to a house sublet, and that, in estimating the gross value, regard ought not to be had to the special price which brewers might give, except in so far as such special price might raise the market value generally. On appeal, the Court of Appeal reversed the decision of the Divisional Court, holding that all considerations tending to affect the value of a hereditament must be taken into account, including the higher rent brewers were prepared to pay in such a case for the public-house, and overruled the decision in *Bradford-on-Avon Assessment Committee v. White*, *supra*, on the ground that it was wrong in law. Thereupon this appeal was brought:—

*Held*: (i) the proper assessment should be at a figure which had regard to the competition of brewers, and to the increased rents which they might offer;

(ii) the decision in *Bradford-on-Avon Assessment Committee v. White*, *supra*, was wrong in law, and the present case was not a favourable one for the application of the doctrine of *stare decisis*.

Order of Court of Appeal ([1937] 2 K. B. 445), affirmed.—ROBINSON BROS. (BREWERS), LTD. v. DURHAM COUNTY ASSESSMENT COMMITTEE, [1938] A. C. 321; 158 L. T. 498; 102 J. P. 313; 82 Sol. Jo. 452; 36 L. G. R. 357; *sub nom.* ROBINSON BROS. (BREWERS), LTD. v. HOUGHTON AND CHESTER-LE-STREET ASSESSMENT COMMITTEE, [1938] 2 All E. R. 79; 107 L. J. K. B. 369; 54 T. L. R. 568, H. L. [668]

*Basis of Assessment—Voluntary Hospital—Rent Payable by Hypothetical Tenant.*

A rating authority, when determining the rateable value of a voluntary hospital, is not bound to give exclusive consideration to what are known as the "contractor's" and the "per bed" bases, but should determine, as in the case of any other hereditament, what is the rent which a hypothetical tenant might be expected to pay for the premises. There is no difference in the rating of a hospital whether it be voluntary or non-voluntary.—KING EDWARD VII WELSH NATIONAL MEMORIAL ASSOCIATION v. SOUTH-EAST GLAMORGAN ASSESSMENT COMMITTEE (1938), 158 L. T. 311; 102 J. P. 105; 82 Sol. Jo. 17; 36 L. G. R. 258, D. C. [669]

*Valuation List—Proposed Amendment of Current Valuation List Affecting Various Hereditaments—"Notice must be given to the occupier"—Whether Occupier of Whole Undivided Hereditament Entitled to Notice of Proposed Amendment Affecting National Hereditaments of Parts of Whole—Rating and Valuation Act, 1925 (c. 90), s. 37 (1), (3), (7).*

A rating authority proposed to amend the current valuation list for the purpose of separately assessing let-out property which formed part of the existing *cumulo* assessment of the undivided hereditament. No notice of the proposal was given to the existing occupier of the

undivided property, on the ground that notice had been given to the occupier of the notional hereditament which it was proposed to carve out of the undivided whole, and that there was no statutory obligation to give notice to more than one occupier. Applicant contended that the assessment committee had no jurisdiction to hear or determine the proposed amendment unless notice had been previously given to the applicant so that the matter should not be dealt with in the absence of applicant :—

*Held*: as applicant was an “occupier” within the meaning of the Rating and Valuation Act, 1925 (c. 90), s. 37 (3), whose rights and property might be vitally affected by decisions of the assessment committee in his absence, the assessment committee had no jurisdiction to hear and determine the proposed amendment unless due notice was previously given to applicant.—*R. v. WEST DERBY ASSESSMENT COMMITTEE, Ex p. MERSEY DOCKS AND HARBOUR BOARD AND LIVERPOOL RATING AUTHORITY*, [1938] 4 All E. R. 110; 159 L. J. 553; 102 J. P. 479; 55 T. L. R. 25; 82 Sol. Jo. 971, D. C. [670]

*Payment—Full Rate—Reduced to “composition rates and rents” if Paid Within Prescribed Time—Second Half of Reduced Amount Due on a Sunday—Demand Note Stating Monday as Day for Payment—Cheque Posted on Monday—Whether Payment in Time—Validity of Demand Note.*

A complaint was preferred against appellants for that they, being persons duly rated and assessed in respect of certain premises, had not paid the sum of £17 17s. 6d., the balance of rates and water rents. The total amount due was £48 5s., but appellants were entitled by statute to an abatement which would reduce the total due to £30 7s. 6d., payable in two instalments, provided the second instalment was paid on or before the expiration of seven months from April 7, 1937—that is, Nov. 7, 1937. Nov. 7, 1937, was a Sunday, and respondents in their demand note stated the date of payment of the second instalment as Nov. 8, 1937. On Nov. 8, 1937, appellants posted a cheque for the amount of the second instalment, and this was delivered to respondents on Nov. 9, 1937. Respondents on Nov. 15, 1937, thereupon demanded from appellants the sum of £17 17s. 6d., being the difference between the full amount of the rates and water rents and the reduced amount as abated, on the ground that they were liable to pay the full amount owing to their failure to pay the second instalment on or before the expiration of seven months from April 7, 1937. The stipendiary magistrate held that payment had not been received until Nov. 9, 1937, the Post Office authorities not being respondents’ agents to receive such payment, and issued a warrant of distress for £17 19s. 6d., being the sum demanded and 2s. costs. Thereupon, this appeal was brought, and appellants contended that they had paid the second instalment “on the expiration of seven months” from April 7, 1937, as the words “on the expiration of seven months” must be construed as meaning after, or at a reasonable time after, the expiration of seven months, and that, the Post Office having become the agents of the respondents to receive payment, the second instalment was received by the respondents on Nov. 8, 1937, when the cheque was posted :—

*Held*: (i) the Post Office were not the agents of the corporation, and therefore the date of payment was not the date on which the cheque was posted ;

(ii) as the second instalment had not been paid within the time

prescribed, the respondents were justified in demanding the full amount of the rate ;

(iii) where the statutory period ended on a Sunday, the corporation were entitled in their demand note to state the following day as the day of payment, and the demand note was not invalid by reason of that statement.—*JOYNSON'S EXECUTORS v. LIVERPOOL CORPORATION*, [1938] 4 All E. R. 183, D. C. [671]

*Rates and Rating—Arrears of Rates—Whether Action Lies—Remedy by Distress—Landlord and Tenant—Mortgage—Interest in Arrear—Appointment of Receiver—Whether Receiver Under any Statutory Duty to Rating Authority to Pay Rates—Law of Property Act, 1925 (c. 20), s. 109 (8).*

Defendant was the receiver of the rents of certain premises, having been appointed by the mortgagees. Plaintiff corporation brought this action to recover rates in respect of a period prior to the time when defendant was appointed. It was contended that the Law of Property Act, 1925, s. 109 (8), placed defendant under a statutory duty to pay the rates :—

*Held* : (i) no action lies to recover rates. The only remedy is that of distress given by statute ;

(ii) defendant was not under any statutory duty to plaintiffs, but only to mortgagor.—*LIVERPOOL CORPORATION v. HOPE*, [1938] 1 K. B. 751 ; [1938] 1 All E. R. 492 ; 107 L. J. K. B. 694 ; 158 L. T. 215 ; 102 J. P. 205 ; 54 T. L. R. 425 ; 82 Sol. Jo. 194 ; 36 L. G. R. 183, C. A. [672]

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## RATING OF SPECIAL PROPERTIES

*See RATES AND RATING.*

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# REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES

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## STATUTES

### THE POPULATION (STATISTICS) ACT, 1938

(1 & 2 Geo. 6, c. 12.)

#### ARRANGEMENT OF SECTIONS

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*An Act to make further provision for obtaining statistical information with respect to the population of Great Britain; and for purposes connected therewith.* [673] [30th March, 1938.]

**1. Power to direct information to be furnished.**—With a view to the compilation of statistical information with respect to the social and civil condition of the population of Great Britain, every person giving information in accordance with the Registration Acts, upon the registration, on or after the first day of July nineteen hundred and thirty-eight, of any birth, still-birth, or death, shall furnish to the registration officer such of the particulars specified in the Schedule to this Act as are appropriate to the registration and are within the knowledge of the person giving the information. [674]

See the Schedule, *post*. The Bill for this Act was in a more extended form, but was much criticised in Parliament.

**2. Duty of Registrar-General to collect information, and provision for expenses.**—(1) It shall be the duty of the Registrar-General to make such arrangements and to do all such things as are necessary for the collection and collation of all particulars furnished to registration officers pursuant to this Act, and for that purpose to make arrangements for the preparation and issue of any necessary forms and instructions. [675]

(2) The Registrar-General in the performance of his functions under this Act shall be subject to the control of, and shall comply with any directions given by, the Minister of Health. [676]

(3) Any expenses incurred with the approval of the Treasury by the Minister of Health or by the Registrar-General in connection with the performance of his functions under this Act shall be defrayed out of moneys provided by Parliament. [677]

**3. Power to make regulations.**—(1) The power of the Minister of Health, and of the Registrar-General with the approbation of the Minister of Health, under the Registration Acts to make regulations with respect to the performance by registration officers of their functions under those Acts shall include power to make regulations requiring registration officers to perform such functions in connection with the furnishing, collection and collation of particulars directed to be furnished by this Act as may be prescribed, and with respect to the performance by them of those functions.

Functions which registration officers are required to perform by virtue of any such regulations shall be deemed to be functions under the Registration Acts. [678]

(2) In section twenty-nine of the Births and Deaths Registration Act, 1836 (which section, as amended by section thirty-one of the Births and Deaths Registration Act, 1874, and by section seven of the Births and Deaths Registration Act, 1926, determines certain fees payable to registration officers in respect of the registration of births, still-births, and deaths) for the words "one shilling" there shall be substituted the words "one shilling and five pence."

Subsection (1) of section eight of the Births and Deaths Registration Act, 1926, shall cease to have effect. [679]

**4. Penalties.**—(1) If any person—

(a) refuses or neglects to furnish in accordance with this Act any information which he is required by this Act to furnish; or

(b) in furnishing any such information makes any statement which, to his knowledge, is false in a material particular;

he shall be liable on summary conviction to a fine not exceeding ten pounds. [680]

(2) No information obtained by virtue of this Act with respect to any particular person shall be disclosed except so far as may be necessary—

(a) for the performance by any person of his functions under this Act in connection with the furnishing, collection or collation of such information; or

(b) for the performance by the Registrar-General of his functions under section five of the Census Act, 1920;

and if any person discloses any such information in contravention of this subsection, he shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding fifty pounds, or to both such imprisonment and such fine, or, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine not exceeding one hundred pounds or to both such imprisonment and such fine:

Provided that nothing in this subsection shall apply to any disclosure of information made for the purposes of any proceedings which may be taken in respect of an offence under this section, or for the purposes of any report of such proceedings. [681]

**5. Saving for Registration Acts.**—Nothing in this Act requiring particulars to be furnished for the purposes of this Act shall affect any provision of the Registration Acts requiring information to be given for the purposes of those Acts. [682]

**6. Application to Scotland.** [683]

**7. Short title, interpretation and extent.**—(1) This Act may be cited as the Population (Statistics) Act, 1938.

(2) In this Act the expression “Registration Acts” means the Births and Deaths Registration Acts, 1886 to 1929, and the expression “registration officer” means any superintendent registrar and registrar of births and deaths.

(3) This Act shall not extend to Northern Ireland.

(4) This Act shall continue in force until the thirtieth day of June nineteen hundred and forty-eight and no longer, unless Parliament otherwise determines :

Provided that, in the event of the expiration of this Act, subsection (2) of section thirty-eight of the Interpretation Act, 1889, shall apply in relation thereto as if this Act had, at the time of its expiration, ceased to have effect by reason of the repeal thereof by another Act. [684]

## Sect. 1.

## SCHEDULE

### MATTERS WITH RESPECT TO WHICH PARTICULARS MAY BE REQUIRED.

#### 1. *On Registration of Birth or Still-birth :—*

- (a) the age of the mother ;
- (b) the date of the marriage ;
- (c) the number of children of the mother by her present husband and how many of them are living ;
- (d) the number of children of the mother by any former husband and how many of them are living.

#### 2. *On Registration of Death :—*

- (a) if the deceased was a male, whether he had been married, and, if so, whether he was married at the date of death ;
- (b) if the deceased was a woman and had been married—
  - (i) the year in which she was married and the duration of the marriage ;
  - (ii) whether she had children by her husband or any former husband ;
- (c) the age of the surviving spouse, if any, of the deceased. [685]



## ORDERS, CIRCULARS AND MEMORANDA

### REGISTRATION OF BIRTHS, STILLBIRTHS AND DEATHS REGULATIONS, 1938

*S. R. & O., 1938, No. 569*

*June 2, 1938*

97030

The Registrar-General, by virtue of section 3 of the Population (Statistics) Act, 1938, and in exercise of the powers under the Births and Deaths Registration Acts, 1836 to 1929, thereby conferred on him and of all other powers enabling him in that behalf, with the approbation and concurrence of the Minister of Health, hereby makes the following Regulations:—

#### *General*

1.—(1) These Regulations may be cited as the Registration of Births, Stillbirths and Deaths Regulations, 1938, and shall be construed as one with the Registration (Births, Stillbirths, Deaths and Marriages) Regulations, 1927 to 1930.

(2) These Regulations shall come into operation on the first day of July, 1938.

(3) The Registration (Births, Stillbirths, Deaths and Marriages) Regulations, 1927 to 1930, and these Regulations may be cited together as the Registration (Births, Stillbirths, Deaths and Marriages) Regulations, 1927 to 1938.

#### *Procedure on registration of births and deaths on information of informant*

2.—(1) Before registering at any time on the information of an informant the birth of a child, whether born alive or stillborn, the registrar shall prepare, on the form provided for the purpose by the Registrar-General, a draft entry of the particulars required to be registered concerning the birth.

(2) Before registering at any time on the information of an informant any death the registrar shall prepare, on the form provided for the purpose by the Registrar-General, a draft entry of the particulars required to be registered concerning such death.

3.—(1) Having prepared such draft entry as aforesaid, the registrar, except in the case of the registration of the death of a child under sixteen years of age or of a birth or death which took place over twelve months previously, shall read to the informant a notice in the following terms—

“I have now to ask you for some further particulars which will not be entered in the Register. This information will be confidential and used only for the preparation of statistics by the Registrar-General.”

(2) The registrar, except in such a case as aforesaid, shall then require the informant to furnish such of the further particulars specified in the First Schedule to these Regulations as are appropriate to the registration and are within the knowledge of the informant, and shall record the information so furnished on the form provided for the purpose by the Registrar-General.

(3) The registrar shall next read or show to the informant the draft entry prepared under Article 2 of these Regulations and the further particulars, if any, recorded under the last preceding paragraph and, after correcting any error or omission, shall proceed with the registration.

*Procedure on registration of birth on declaration in pursuance of section 26 of the Local Government Act, 1929*

4.—(1) Where in pursuance of section 26 of the Local Government Act, 1929, a person desires to give information concerning a birth by means of a declaration made in the presence of a registrar, the registrar shall first prepare, on the form provided for the purpose by the Registrar-General, a draft of the particulars required to be declared concerning such birth.

(2) The registrar shall then comply with the provisions of Article 3 of these Regulations as if the references therein to a draft entry and the registration were respectively references to a draft of the particulars to be declared and the making of the declaration.

(3) When sending the attested declaration to the registrar of the sub-district in which the birth took place the registrar shall also send to him the form on which the draft of the particulars to be declared was prepared and the further particulars were entered.

*Procedure on registration of a stillbirth or death on coroner's certificate, and on re-registration of a birth, stillbirth or death in certain cases.*

5.—(1) Before registering a stillbirth or death after receipt of a coroner's certificate upon an inquest in respect thereof, the registrar shall prepare, on the form provided for the purpose by the Registrar-General, a draft entry of the particulars required to be registered concerning the stillbirth or death.

(2) Before re-registering, with the authority of the Registrar-General or an Inspector of Registration a birth, not being the birth of a legitimated person, stillbirth or death which a registrar has previously registered and before re-registering, after receipt of a coroner's certificate upon an inquest in respect thereof, a stillbirth or death which a registrar has previously registered, the registrar shall prepare, on the form provided for the purpose by the Registrar-General, a draft entry of the particulars required to be re-registered concerning the birth, stillbirth or death.

(3) Nothing in these Regulations shall be construed as requiring or authorizing a registrar to obtain or record in connection with any such registration or re-registration as is referred to in this Article any such further particulars as are mentioned in paragraph (2) of Article 3 of these Regulations.

*Notice to be exhibited by Registrars*

6. In every registrar's office or in a waiting room used in connection therewith by informants, there shall be exhibited in a prominent position a printed notice in the form set out in the Second Schedule to these Regulations.

*Forms*

7.—(1) Every registrar shall complete the forms used by him for the purposes of these Regulations in the manner indicated in the forms.

(2) Except as to any form which, under paragraph (3) of Article 4 of these Regulations, a registrar is required to send to another registrar, every registrar shall transmit to the Registrar-General at such intervals as the Registrar-General may direct all such forms as aforesaid which he completes.

(3) A registrar receiving any completed form under paragraph (3) of Article 4 of these Regulations shall further complete the form in the manner therein indicated and treat the same as a form wholly completed by him.

(4) All such completed forms as aforesaid, while in the custody of a registrar and not in use, shall be always kept in the register box provided under Section 14 of the Births and Deaths Registration Act, 1836.

*Amendment of the Registration (Births, Stillbirths, Deaths and Marriages) Regulations, 1927 to 1930*

8. The Registration (Births, Stillbirths, Deaths and Marriages) Regulations, 1927 to 1930, are hereby amended to such extent as is necessary in order that full effect may be given to the provisions of these Regulations, and those Regulations shall have effect accordingly, and in particular, and without prejudice to the generality of the foregoing provision, as if the following provisions of the Registration (Births, Stillbirths, Deaths and Marriages) Regulations, 1927, were set out herein and in terms made applicable to the amendment hereby effected, namely, Articles 18, 23, 34, 35, 36 (2), 39 (1), 58, 59, 63, 74, 76, 79, 80, 81 and 83, and as if from Article 110 of the said Regulations the words "the entry and a third copy of" in paragraph (1) thereof and the words "or third copy" in paragraph (2) thereof were omitted.

# FIRST SCHEDULE

## BIRTH AND STILLBIRTH REGISTRATION

### *In All Cases*

1. Mother's Age. Birthday—Day.....Month.....  
Age last Birthday.....years.

### *If Parents married to each other*

2. Date of Marriage :—Month.....Year.....  
3. Mother's Previous \* Children by Present Husband :—  
(a) Total of living, stillborn and dead.....  
(b) Number still living.....  
4. Mother's Previous Children by any Former Husband :—  
(a) Total of living, stillborn and dead.....  
(b) Number still living.....

\* Excluding birth or births now being registered.

## DEATH REGISTRATION

*Both Sexes, not under 16 years of age*

1. State whether at the date of death Deceased (a) was Single (b) was Married or (c) was widowed or had otherwise ceased to be married.....
2. If Married at the date of death, state Age last birthday of Deceased's surviving Widow or Widower.....

*Females who were or had been married*

3. Year of marriage \* Year.....
4. If married at the date of death, duration of marriage \* in years and months Years.....Months.....
5. If widowed or if marriage otherwise terminated before the date of death, duration of marriage \* in completed years Completed Years.....
6. Had the deceased any children by her husband or any former husband ? (Yes or No).....

\* If deceased was married more than once this relates to the last marriage.

## SECOND SCHEDULE

## BIRTH, STILLBIRTH AND DEATH REGISTRATION

## NOTICE TO INFORMANTS

1. The registrar will first ask you for your name and usual residence and as to your connection with the birth or death ; that is, in what capacity you are attending for the registration.

2. He will then ask you for information concerning the particulars which must be entered in the Register.

3. After obtaining these particulars, and before registering the birth or death, he is required to ask you for certain additional particulars. THESE ADDITIONAL PARTICULARS WILL NOT BE ENTERED IN THE REGISTER. THEY WILL BE CONFIDENTIAL AND USED ONLY FOR THE PREPARATION OF STATISTICS BY THE REGISTRAR GENERAL.

4. Finally, the registrar will read over to you or show you the note which he has made of the particulars to be entered in the Register ; and you will be required to sign the entry in the Register as a correct statement of the information which you have given. [686]

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# REGISTRATION OFFICER

See ELECTIONS; LAND DRAINAGE.

## REGULATED INDUSTRIES, TRADES AND BUSINESSES

	PAGE		PAGE
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### STATUTES

#### THE CHIMNEY SWEEPERS ACTS (REPEAL) ACT, 1938

(1 & 2 Geo. 6, c. 58.)

*An Act to repeal the Chimney Sweepers and Chimneys Regulation Acts, 1840 and 1864, the Chimney Sweepers Act, 1875, and the Chimney Sweepers Act, 1894. [687] [29th July, 1938.]*

1. **Repeals, short title and extent.**—(1) The Chimney Sweepers and Chimneys Regulation Acts, 1840 and 1864, the Chimney Sweepers Act, 1875, and the Chimney Sweepers Act, 1894, are hereby repealed.

(2) This Act may be cited as the Chimney Sweepers Acts (Repeal) Act, 1938, and shall not apply to Scotland or to Northern Ireland. [688]

For the Chimney Sweepers and Chimneys Regulation Acts, 1840 and 1864, see 9 Halsbury's Statutes 777, 782; and for the Chimney Sweepers Acts, 1875 and 1894, see 13 Halsbury's Statutes 784, 870.

### CASES

*Street Trading—Public Carriage Way—Receptacle Occupying Stationary Position Thereon—Selling Article Therefrom Without a Licence—Receptacle Ordinarily Moved from Place to Place in Pursuit of Trade—London County Council (General Powers) Act, 1927 (c. xxvii), s. 30.*

Appellant was charged with having unlawfully sold a certain article or thing, namely ice cream, from a receptacle occupying a stationary position at a place on a public carriageway, without a licence, in contravention of the London County Council (General Powers) Act, 1927,

s. 30. The receptacle was a tricycle carrying a box containing portions of ice cream. Appellant patrolled certain streets several times a day, and at certain times of the day, when children were entering or leaving school, he stayed outside the school so that the children might buy ice cream from him. Appellant contended that no offence had been committed under s. 30, as the proviso to that section rendered the section inoperative in cases of a receptacle which a person "ordinarily moves from place to place in pursuit of and while conducting his trade." The justices held that the receptacle occupied a stationary position within the meaning of s. 30, and that an offence had been committed. They dismissed the charge under the Probation of Offenders Act, 1907 :—

*Held*: appellant's conduct was covered by the proviso to s. 30 of the Act of 1927, and no offence had been committed.—*TAYLOR v. TOWNEND, SAUNDERS v. TOWNEND*, [1938] 2 K. B. 198; [1938] 1 All E. R. 336; 107 L. J. K. B. 403; 158 L. T. 247; 102 J. P. 163; 54 T. L. R. 343; 82 Sol. Jo. 156; 36 L. G. R. 199. [689]

*Street Trading—Hawker's Licence—Selling from Stationary Position Forbidden—Movable Barrow Remaining Stationary.*

*CRANFIELD v. LAWRENCE* (1938), 82 Sol. Jo. 873. [690]

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## REPAIR OF ROADS

*See* HIGHWAYS.

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## RESTRICTIVE COVENANTS

*See* LAND, ACQUISITION, SALE, ETC., OF.

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## RETURNING OFFICER

*See* ELECTIONS; LAND DRAINAGE.

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## ROAD AND RAIL TRAFFIC

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## ORDERS, CIRCULARS AND MEMORANDA

### REMOVAL OF VEHICLES REGULATIONS, 1938

*S. R. & O., 1938, No. 79*

*February 4, 1938*

The Minister of Transport in exercise of the powers vested in him under or by virtue of paragraph (c) of sub-section (1) of Section 59 of the Road Traffic Act, 1930, as amended by Section 22 of the Road Traffic Act, 1934, and of all other powers in that behalf vested in him hereby makes the following Regulations :—

1. These Regulations may be cited as “ The Removal of Vehicles Regulations, 1938 ”, and shall come into force on the 1st March, 1938.

2. Part II of the London Traffic (Miscellaneous Provisions) Consolidation Provisional Regulations, 1934, is hereby revoked.

3. It shall be the duty of the owner, driver or other person in control or in charge of any vehicle—

- (a) when the vehicle has broken down on a road in such circumstances that the defects cannot be remedied within a reasonable time or the presence of the vehicle is likely unnecessarily to obstruct or to cause danger to other persons using the road, or
- (b) when required to do so by a police constable on the ground that the vehicle has been permitted to remain at rest on a road in such a position or in such condition or in such circumstances as to be likely to cause danger to other persons using the road

to remove or take all reasonable steps to secure the removal of such vehicle as soon as practicable.

4. It shall be the duty of a police constable to take all reasonable steps to remove or to employ some other person to remove, and where necessary to provide for the safe custody of, any vehicle if he has reason to believe—

- (a) that the owner or the driver or other person in control or in charge thereof has failed to take all reasonable steps to remove it or cause it to be removed in accordance with the provisions of Regulation 3 hereof, or
- (b) that the vehicle has been abandoned.

5. When any police constable removes or provides for the safe custody of any vehicle or employs any other person to remove it or provide for its safe custody in accordance with Regulation 4 hereof, except upon proof of failure to exercise reasonable care neither the constable nor any such other person shall be liable to any action or demand whatsoever for the recovery or any alleged damage to such vehicle or otherwise in respect of the removal thereof.

6. For the purpose of these Regulations the word "vehicle" shall include any load carried thereby.

7. If any person fails to comply with any of the provisions of Regulation 3 hereof he shall be guilty of an offence and liable on summary conviction to a fine not exceeding twenty pounds.

8. Nothing in these Regulations shall :

- (a) affect the operation prior to the date hereof of Part II of the London Traffic (Miscellaneous Provisions) Consolidation Provisional Regulations, 1934, or anything done or suffered under that Part of those Regulations, or
  - (b) affect any right, privilege, obligation or liability acquired, accrued or incurred under that Part of those Regulations, or
  - (c) affect any fine or punishment incurred in respect of a breach of that Part of those Regulations, or
  - (d) affect any legal proceeding or remedy in respect of any such right, privilege, obligation, liability, fine or punishment :
- and any such legal proceeding or remedy may be instituted, continued or enforced and any such fine or punishment may be imposed as if these Regulations had not been made.

9. The Interpretation Act, 1889, applies for the purpose of the interpretation of these Regulations as it applies for the purpose of the interpretation of an Act of Parliament.

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[691]

## ROAD VEHICLES (REGISTRATION AND LICENSING) REGULATIONS, 1938

*S. R. & O., 1938, No. 80*

*February 5, 1938*

The Minister of Transport in exercise of the powers conferred on him by Section 12 of the Roads Act, 1920, and of all other

powers in that behalf vested in him hereby makes the following Regulations :—

1. These Regulations may be cited as “ The Road Vehicles (Registration and Licensing) Regulations, 1938 ”.

2. For the purpose of these Regulations the expressions “ invalid carriage ” and “ motor cycle ” have the meanings assigned to them by the Road Traffic Act, 1930 ; the expression “ hours of darkness ” has the meaning assigned to it by Sub-section (4) of Section 1 of the Road Transport Lighting Act, 1927 ; and the expression “ observer ” means a person standing on the same plane as the vehicle at any point which is more than 10 feet away from the identification mark within a square described on the ground, behind the vehicle in the case of the rear identification mark and in front of the vehicle in the case of the front identification mark, so that one corner of the square is immediately below the identification mark and that the diagonal of the square, drawn from the said corner, is the prolongation of a line parallel to the longitudinal axis of the vehicle.

3.—(1) Every mechanically-propelled vehicle registered for the first time on or after the first day of October, 1938, and as from the first day of October, 1941, every mechanically-propelled vehicle shall comply with the following requirements in place of those of Regulations 23 and 26 of the Road Vehicles (Registration and Licensing) Regulations, 1924 :—

- (i) The identification mark shall be exhibited on the front of, and on the back of, the vehicle.
- (ii) Save as hereinafter provided in sub-paragraph (iii) hereof the identification mark of every motor vehicle shall be exhibited so that in normal daylight the letters and figures of the front and the rear identification mark shall be easily distinguishable by an observer in front of or behind the vehicle, as the case may be, the diagonal of the square aforesaid being 60 feet in the case of a motor cycle or an invalid carriage and 75 feet in every other case.
- (iii) In the case of a motor bicycle or an invalid carriage the front identification mark may, if it is a plate having duplicate faces conforming with the Fourth Schedule to the Road Vehicles (Registration and Licensing) Regulations, 1924, be fixed so that from whichever side the vehicle is viewed the letters and figures on one or other face of the plate are easily distinguishable, although they may not be distinguishable from the front of the vehicle.
- (iv) Whenever during the hours of darkness a mechanically-propelled vehicle is upon a public road, a lamp shall be kept burning on the vehicle so contrived as to illuminate by means of reflection, transparency or otherwise, every letter and figure of the identification mark exhibited on the back of the vehicle or on the rearmost vehicle attached to the back of the vehicle as the case may be, and to render them easily distinguishable in the absence of fog by an observer behind the vehicle, the diagonal of the square aforesaid being 50 feet in the case of a motor cycle or an invalid carriage and 60 feet in every other case.

Provided that this sub-paragraph shall not apply in

cases where, under Regulation 18 of the Road Vehicles Lighting Regulations, 1936, the Chief Officer of Police of any police area has given his consent to the use of a parking place or a stand for hackney carriages by vehicles without lights.

(2) No other figures or letters and no design or ornamentation shall be placed near to any identification mark in such a manner as to be liable to render it more difficult to read or distinguish such identification mark when the vehicle is in motion.

4. The Interpretation Act, 1889, applies for the purpose of the interpretation of these Regulations as it applies for the purpose of the interpretation of an Act of Parliament.

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[692]

## HEAVY GOODS VEHICLES (DRIVERS' LICENCES) AMENDMENT REGULATIONS, 1938

*S. R. & O., 1938, No. 451*

*April 23, 1938*

Whereas in exercise of the powers vested in him under or by virtue of the Road Traffic Acts, 1930 to 1936, the Minister of Transport on the 25th day of November, 1936, made the Heavy Goods Vehicles (Drivers' Licences) Regulations, 1936 (hereinafter referred to as "the Principal Regulations"):

And whereas it is expedient that the provisions of the Principal Regulations should be modified in manner hereinafter appearing.

Now, therefore, in exercise of the powers so vested in him as afore-said, the Minister of Transport hereby makes the following Regulations:

1. These Regulations may be cited as "The Heavy Goods Vehicles (Drivers' Licences) Amendment Regulations, 1938".

2. Regulation 7 of the Principal Regulations shall have effect as though the words "except in the case of a vehicle which is not constructed or adapted to carry more than one person" were inserted immediately after the word "shall" in the second line thereof.

3. The Interpretation Act, 1889, applies for the purpose of the interpretation of these Regulations as it applies for the purpose of the interpretation of an Act of Parliament.

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[693]

## MOTOR VEHICLES (CONSTRUCTION AND USE) (AMENDMENT) PROVISIONAL REGULATIONS, 1938

*February 25, 1938*

Whereas in exercise of the powers vested in him by the Road Traffic Act, 1930, the Minister of Transport on the 24th March, 1937, made the Motor Vehicles (Construction and Use) Regulations, 1937 (hereinafter referred to as "the Principal Regulations").

And whereas the Principal Regulations were amended by the Motor Vehicles (Construction and Use) (Amendment) Provisional Regulations, 1937.

And whereas it is expedient that the provisions of the Principal Regulations should be further modified in manner hereinafter appearing.

Now, therefore, in exercise of the powers vested in him the Minister of Transport hereby makes the following Regulations and further certifies under Section 2 of the Rules Publication Act, 1893, that on account of urgency such Regulations should come into force forthwith as Provisional Regulations and continue in force until Statutory Rules shall have been made in accordance with the last mentioned Act.

1. These Regulations may be cited as "The Motor Vehicles (Construction and Use) (Amendment) Provisional Regulations, 1938".

2. Regulation 32 of the Principal Regulations shall have effect as though the following words were added as a further proviso thereto :

"Provided also that in the case of a vehicle propelled by steam, using solid fuel and registered before the 1st January, 1939, the aforesaid width of 7 feet 6 inches may be exceeded by 3 inches in cases where the excess width is due solely to projection of the wheels or tyres beyond the sides of the vehicle."

3. Regulation 48 of the Principal Regulations shall have effect as though :—

(i) the word "or" which occurs immediately after the words "articulated vehicle" were deleted therefrom; and

(ii) the words "or to a trailer which is a trolley vehicle in course of construction or delivery" were added thereto after the word "breakdown".

4. Regulation 63 of the Principal Regulations shall have effect as though the following words were added as a proviso thereto :—

"Provided that in the case of a wheeled trailer drawn by a wheeled heavy motor car or wheeled motor car propelled by steam and using solid fuel, the total laden weight of the trailer together with that of the drawing vehicle may, if all the wheels of both vehicles are fitted with pneumatic tyres, equal but shall not exceed 24 tons."

5. The Interpretation Act, 1889, applies for the purpose of the interpretation of these Regulations as it applies for the purpose of the interpretation of an Act of Parliament.

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[694]

## MOTOR VEHICLES (CONSTRUCTION AND USE) (AMENDMENT NO. 2) PROVISIONAL REGULA- TIONS, 1938

October 21, 1938

Whereas in exercise of the powers conferred on him by the Road Traffic Act, 1930, the Minister of Transport on the 24th March, 1937, made the Motor Vehicles (Construction and Use) Regulations, 1937 (hereinafter referred to as "the Principal Regulations"), and on the

10th May, 1937, made the Motor Vehicles (Construction and Use) (Track Laying Vehicles) Provisional Regulations, 1937 (hereinafter referred to as "the Track Laying Regulations") :

And whereas the Regulations aforesaid have been amended.

And whereas it is expedient that the provisions of the Regulations aforesaid should be further modified in manner hereinafter appearing.

Now, therefore, in exercise of the powers conferred on him as aforesaid, the Minister of Transport hereby makes the following Regulations and further certifies under Section 2 of the Rules Publication Act, 1893, that on account of urgency such Regulations should come into force forthwith as Provisional Regulations and continue in force until Statutory Rules shall have been made in accordance with the last mentioned Act.

1. These Regulations may be cited as "The Motor Vehicles (Construction and Use) (Amendment No. 2) Provisional Regulations, 1938."

2. Regulation 11 of the Principal Regulations shall have effect as though in paragraph (1) thereof the words "a land tractor" were inserted immediately before the words "an invalid carriage".

3. Regulation 58 of the Principal Regulations shall not apply to any vehicle used solely for fire brigade purposes.

4. Paragraph (ii) of Regulation 58 and paragraph (iv) of the proviso to Regulation 60 of the Principal Regulations shall have effect as though the words "while it is being used for that purpose" were omitted therefrom.

5. Regulation 60 of the Principal Regulations shall have effect as though the following were added as an additional proviso thereto :—

"(vi) any water cart drawn by, and used for carrying water for, a road roller."

6. Regulation 65 of the Principal Regulations shall have effect as though the second proviso thereto were omitted and the following were inserted in lieu thereof :—

"Provided further that in the case of a four-wheeled trailer or a six-wheeled trailer, while being used for the carriage of round timber, the weight transmitted to the road surface by any two wheels in line transversely may, if the vehicle is fitted with pneumatic tyres on all wheels, if it is not drawn at a speed exceeding 12 miles per hour at any time when the weight so transmitted exceeds  $6\frac{1}{2}$  tons and if the total weight transmitted to the road surface by all wheels of the trailer does not exceed in the case of a four-wheeled trailer 13 tons and in the case of a six-wheeled trailer  $19\frac{1}{2}$  tons, equal but shall not exceed 8 tons."

7. Regulation 68 of the Principal Regulations is hereby revoked and the following Regulation shall be inserted in its place :—

"68. Every windscreen wiper required by these Regulations to be fitter to a motor vehicle and every part of every braking system and of the means of operation thereof fitted to a motor vehicle or trailer, and all steering gear fitted to a motor vehicle shall at all times, while the motor vehicle or trailer is used on a road, be maintained in good and efficient working order and shall be properly adjusted."



8. Paragraph (3) of Regulation 82 of the Principal Regulations shall have effect as though the following proviso were added thereto :—

“ Provided that this paragraph shall not apply to prevent the working of the engine of a fire bridge vehicle for any fire fighting purpose.”

9. Regulation 12 of the Track Laying Regulations shall have effect as though in paragraph (i) thereof the words “ a land tractor or ” were inserted immediately after the words “ other than ”.

10. Paragraph (ii) of Regulation 44 and paragraph (iv) of the proviso to Regulation 46 of the Track Laying Regulations shall have effect as though the words “ while it is being used for that purpose ” were omitted therefrom.

11. Regulation 54 of the Track Laying Regulations is hereby revoked and the following Regulation shall be inserted in its place :—

“ 54. Every windscreen wiper required by these Regulations to be fitted to a motor vehicle and every part of every braking system and of the means of operation thereof fitted to a motor vehicle or trailer, and all steering gear fitted to a motor vehicle shall at all times, while the motor vehicle or trailer is used on a road, be maintained in good and efficient working order and shall be properly adjusted.”

12. The Interpretation Act, 1889, applies for the purpose of the interpretation of these Regulations as it applies for the purpose of the interpretation of an Act of Parliament.

\* \* \* \* \*

[695]

## MOTOR VEHICLES (CONSTRUCTION AND USE) (AMENDMENT NO. 3) PROVISIONAL REGULATIONS, 1938

*October 24, 1938*

Whereas in exercise of the powers conferred on him by the Road Traffic Act, 1930, the Minister of Transport on the 24th March, 1937, made the Motor Vehicles (Construction and Use) Regulations, 1937 (hereinafter referred to as “ the Principal Regulations ”):

And whereas the Regulations aforesaid have been amended.

And whereas it is expedient that the provisions of the Regulations aforesaid should be further modified in manner hereinafter appearing.

Now, therefore, in exercise of the powers conferred on him as aforesaid, the Minister of Transport hereby makes the following Regulations and further certifies under Section 2 of the Rules Publication Act, 1893, that on account of urgency such regulations should come into force forthwith as Provisional Regulations and continue in force until Statutory Rules shall have been made in accordance with the last mentioned act.

1. These Regulations may be cited as “ The Motor Vehicles (Construction and Use) (Amendment No. 3) Provisional Regulations, 1938 ”

2. Paragraph (1) of Regulation 3 of the Principal Regulations shall have effect as though there were added at the end of the definition of "Overall width" the words "and in the case of vehicles registered before the 2nd January, 1939, of so much of a swivelling window designed to allow the driver to give hand signals as projects when opened not more than four inches beyond the side of the vehicle".

3. The Interpretation Act, 1889, applies for the purpose of the interpretation of these Regulations as it applies for the purpose of the interpretation of an Act of Parliament.

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[696]

## GOODS VEHICLES (LICENCES AND PROHIBITIONS) (AMENDMENT) PROVISIONAL REGULATIONS, 1938

*September 1, 1938*

Whereas in exercise of the powers vested in him under or by virtue of the Road and Rail Traffic Act, 1933 and of all other powers in that behalf vested in him the Minister of Transport (hereinafter referred to as "the Minister") on the 26th day of March, 1936, made The Goods Vehicles (Licences and Prohibitions) Regulations, 1936 (hereinafter referred to as "the Principal Regulations")

And whereas by The Goods Vehicles (Licences and Prohibitions) (Amendment) Regulations, 1937, the Minister made Regulations amending the Principal Regulations.

And whereas it is expedient that the provisions of the Principal Regulations should be further modified in manner hereinafter appearing.

Now, therefore, in exercise of the powers vested in him the Minister hereby makes the following Regulations and further certifies under Section 2 of the Rules Publication Act, 1893, that on account of urgency such Regulations should come into force forthwith as Provisional Regulations and continue in force until Statutory Rules shall have been made in accordance with the last-mentioned Act.

1.—(1) These Regulations may be cited as "The Goods Vehicles (Licences and Prohibitions) (Amendment) Provisional Regulations, 1938".

(2) The Goods Vehicles (Licences and Prohibitions) (Amendment) Regulations, 1937, are hereby revoked.

2. The Principal Regulations shall have effect as though :—

(1) Regulations 12 thereof were omitted and the following Regulation were inserted in lieu thereof :—

"12—(1) The licensing authority shall as soon as may be issue to the holder of a licence a certificate (hereinafter referred to as an 'identity certificate') in respect of each vehicle authorised to be used under the licence. The identity certificate so issued for each vehicle authorised under an 'A' licence or a 'B' licence shall (except in the case of short term licences) be valid only for the period covered by the first instalment of the fee paid to the licensing authority in accordance with the provisions of

Regulation 14 hereof and thereafter a fresh identity certificate shall be issued by the licensing authority as and when each subsequent instalment of such fee is paid and each such fresh identity certificate shall be valid only for the period covered by that instalment or until the licence expires whichever is the earlier. Provided that where a licence continues in force under the provisions of sub-section (5) of Section 3 or of sub-section (15) of Section 15 of the Act, the identity certificate shall continue in force for a like period.

(2) The holder of a licence shall, during such time as any vehicle is used under the licence, cause a valid identity certificate appropriate to the vehicle to be affixed to that vehicle (or in the case of a trailer to the trailer or to the vehicle drawing it) in a waterproof container, either,

- (i) in a conspicuous place on the left or near side of the vehicle, or
- (ii) notwithstanding anything contained in the Road Vehicles (Registration and Licensing) Regulations, 1924 (hereinafter referred to as 'the Registration Regulations') or in any Regulations which may hereafter be made in place of those Regulations.

(a) in all cases, on the windscreen of the vehicle, either adjacent to the licence under Section 13 of the Finance Act, 1920, if such licence is carried on the windscreen, or, if such licence is not so carried, in the alternative position permitted for such licence by the Registration Regulations; and

(b) in the case of vehicles used under a general trade licence within the meaning of the Registration Regulations, to the general trade plate at the front or at the rear of the vehicle, provided that no material part of such plate is thereby obscured.

and at all times while the vehicle is being so used the identity certificate shall be readily legible."

- (2) Regulation 14 thereof were omitted and the following Regulation were inserted in lieu thereof:—

" 14.—(1) Subject as hereinafter provided in paragraph 13 hereof, fees for licences (other than short term licences) shall be computed at the following rates:—

	£	s.	d.
' A ' Licence	—	—	7 10 0
' B ' Licence	—	—	3 10 0
' C ' Licence	—	—	1 5 0

in respect of each vehicle authorised.

(2) Fees for ' A ' Licences and ' B ' Licences (other than short term licences) shall be payable in yearly instalments. The first instalment shall be paid before the

licence is issued, and subsequent instalments shall be payable at intervals of 12 months reckoned back from the date of expiry of the licence. Each instalment shall be, in the case of an 'A' licence one-fifth, and in the case of a 'B' licence one-half of the fee payable for the full currency period of that licence, except that in the case of a licence for a shortened currency period the first instalment shall consist of the sum payable for a licence for the full currency period less the amount of the remaining instalments payable and any sum by which the fee for the full currency period is reduced by virtue of the provisions of paragraph (4) hereof.

(3) Where a licence for the currency period is granted in substitution for a short term licence issued under the provisions of sub-section (4) of Section 3 of the Act and is expressed to have effect from a date prior to the expiry of that short term licence, there shall be set off against the first instalment due in respect of such licence a sum computed at the following rate for each complete month by which the period of the short term licence is curtailed.

	<i>s.</i>	<i>d.</i>
'A' Licence - - - - -	2	6
'B' Licence - - - - -	3	0

in respect of each vehicle authorised.

(4) Where a licence is granted for a shortened currency period under the provisions of the Goods Vehicles (Duration of Carriers' Licences) Provisional Regulations, 1938, the fee payable shall be that for a licence for the full currency period less an amount computed at the following rate in respect of each complete period in the case of an 'A' licence or a 'B' licence of six months and in the case of a 'C' licence of 12 months by which the currency period is shortened.

	<i>s.</i>	<i>d.</i>
'A' Licence - - - - -	15	0
'B' Licence - - - - -	17	6
'C' Licence - - - - -	5	0

in respect of each vehicle authorised.

(5) The fee for the variation of a licence which has the effect of authorising the use under the licence of a greater number of vehicles than the maximum number authorised under the licence at any previous time shall be computed at the following rate for each additional vehicle above that maximum :—

(a) for each period of six months (or part of such period) of the unexpired period of

	<i>s.</i>	<i>d.</i>
an 'A' Licence - - -	15	0
a 'B' Licence - - -	17	6

and

every such fee shall be payable in equal yearly instalments except that the first instalment shall be in respect of the broken period of a year, if any. The first instalment shall be paid before the licence is varied and subsequent instalments

shall be payable on the dates when the instalments of the fee in respect of the licence are respectively due ; and

- (b) for each year (or part of a year) of the unexpired period of a

	<i>s.</i>	<i>d.</i>
' C ' Licence - - - -	5	0

In each case the unexpired period shall be calculated from the date from which the use of the additional vehicle is authorised. Provided that, for the purposes of this paragraph an additional motor vehicle shall not be regarded as authorised under a ' C ' licence until a ' Variation of Private " C " Carrier's Licence ' shall have been issued in respect of it.

Provided also that if, at the time of application for a variation of a licence, the maximum number of vehicles authorised under the licence at any previous time has been reduced under the provisions of sub-section (3) of Section 10 or sub-section (3) of Section 13 of the Act, then fees shall be payable, at the same rate and in the same manner as provided in this paragraph in respect of each additional vehicle in excess of the number authorised at the time of the application for the variation.

(6) The fee for a short term licence shall be computed at the following rate for each vehicle authorised to be used under the licence :—

	<i>s.</i>	<i>d.</i>
Short Term ' A ' Licence - - - -	15	0
Short Term ' B ' Licence - - - -	17	6
Short Term ' C ' Licence - - - -	5	0

provided that in the case of a short term ' A ' licence or a short term ' B ' licence granted under the provisions of sub-section (4) of Section 3 of the Act the fee shall be computed at the following rate for each month or part of a month for which the licence is valid :—

	<i>s.</i>	<i>d.</i>
Short Term ' A ' Licence - - - -	2	6
Short Term ' B ' Licence - - - -	3	0

in respect of each vehicle authorised to be used thereunder.

(7) The fee for the variation of a short term licence which has the effect of authorising the use under the licence of a greater number of vehicles than the maximum number authorised under the licence at any previous time shall be computed at the following rate for each month or part of a month for which the use of each additional vehicle above that maximum is authorised :—

	<i>s.</i>	<i>d.</i>
as respects short term ' A ' licences - -	2	6
as respects short term ' B ' licences - -	3	0

(8) The fee for variation of the conditions attached to a ' B ' licence in pursuance of sub-section (3) of Section 8 of the Act shall be ten shillings.

(9) No fee shall be payable for any variation which involves solely :—

- (a) the deletion from a licence of any vehicle authorised under that licence,
- (b) the reduction of the number of vehicles authorised under the licence, or
- (c) the substitution of one vehicle for another vehicle authorised under the licence.

(10) Where vehicles are authorised to be hired under a licence the amount of the fee shall be reckoned on the basis of the maximum number of vehicles authorised to be hired at any one time.

(11) Where on the grant of a licence the licensing authority includes vehicles to be acquired by the licensee the extra fee to be paid when a vehicle is acquired shall be computed at the same rate and payable in the same manner as those payable under paragraphs (5) or (7) hereof as the case may be and shall be calculated as from the date on which the identity certificate for that vehicle is issued.

(12) Where on an application to which the provisions of paragraph (b) of sub-section (3) of Section 11 of the Act apply the licensing authority grants a licence to expire not later than an existing licence under which the vehicles concerned are authorised to be used for the purposes of a business which the applicant has acquired or intends to acquire, the fee to be paid shall be computed at the same rate and payable in the same manner as those payable under paragraph (5) hereof in respect of each vehicle authorised under the licence and shall be calculated as from the date on which the licence is expressed to have effect.

(13) When a licence has been revoked or a vehicle has been permanently removed therefrom under the provisions of sub-section (3) of Section (10) or sub-section (3) of Section 13 of the Act, no further instalment shall be payable in respect of that licence or vehicle as the case may be.

(14) None of the documents specified hereunder shall be issued until the applicant shall have paid to the licensing authority the appropriate fee or instalment of fee in respect thereof :—

Licence,

Variation of Public ' A ' Carrier's Licence,

Variation of Limited ' B ' Carrier's Licence,

Variation of Private ' C ' Carrier's Licence,

and

Variation of conditions attached to Limited ' B ' Carrier's Licence.

(15) No identity certificate shall be issued in respect of any vehicle until the applicant shall have paid to the licensing authority any fee or instalment of such fee then due from him in respect of the licence in which such vehicle is authorised.



- (16) The fee payable on the issue of a duplicate of an identity certificate or of any of the documents specified in paragraph (14) hereof shall be one shilling ”.
- (3) From Regulation 19 thereof “(10)” were omitted and “(14)” were inserted in lieu thereof.
- (4) Regulation 20 thereof was omitted and the following Regulation was inserted in lieu thereof :—
- “ (20) If a licence ceases to have effect, otherwise than by the effluxion of time, or is suspended or revoked or if a vehicle has been removed from a licence under the provisions of sub-section (3) of Section 10 or sub-section (3) of Section 13 of the Act, the holder of the licence shall within five days after a notice to that effect has been delivered to him personally or sent to him by registered post at the address shown in his application or last notified in accordance with Regulation 17 of these Regulations send or deliver such licence together with the current identity certificate or certificates issued under the licence to the licensing authority by whom the licence was granted and the said certificate or certificates issued, for retention during the time of suspension or for cancellation or alteration as the case may be and the licensing authority shall on the removal of a suspension return the licence and the said certificate or certificates to the holder. Provided that in the case of a vehicle which has been removed from a licence under the provisions of sub-section (3) of Section 10 or sub-section (3) of Section 13 of the Act, it shall only be necessary to send to the licensing authority the licence and the current certificate issued in respect of that vehicle.”
- (5) From paragraph 5 of form G.V. 5 in the First Schedule thereto “7s. 6d.” were omitted and a blank space were left in lieu thereof in which the amount of the appropriate fee according to the period of the licence should be inserted.

8. The Interpretation Act, 1889 applies for the purpose of the interpretation of these Regulations as it applies for the purpose of the interpretation of an Act of Parliament.

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[697]

## ROAD AND RAIL TRAFFIC ACT (EXEMPTION) REGULATIONS, 1938

*S. R. & O., 1938, No. 508*

*May 11, 1938*

The Minister of Transport in exercise of the powers vested in him under or by virtue of the Road and Rail Traffic Act, 1933, and of all other powers in that behalf vested in him hereby makes the following Regulations.

1. These Regulations may be cited as “The Road and Rail Traffic Act (Exemption) Regulations, 1938 ”.

2. The Road and Rail Traffic Act (Exemption) Regulations, 1936, and the Road and Rail Traffic Act (Exemption) (Amendment) Provisional Regulations, 1936, are hereby revoked.

3. The provisions of Section 1 of the Act shall not apply :—

\* \* \* \* \*

(e) to the use of a road roller when hauling (i) a trailer used in connection with the construction, maintenance or repair of roads which, notwithstanding that it may incidentally be used for the carriage of goods in such connection, is not primarily constructed for the carriage of goods, or (ii) a water cart used in such connection ;

(f) to the use of any tower wagon or trailer drawn by a tower wagon, provided that in each case the only goods carried on the vehicle are such as are required for use in connection with the work on which the tower wagon is ordinarily used as such ;

\* \* \* \* \*

(h) to the use of any vehicle by a highway authority for the purposes of Section 27 of the Road Traffic Act, 1930 ;

\* \* \* \* \*

4. The Interpretation Act, 1889, applies for the purpose of the interpretation of these Regulations as it applies for the purpose of the interpretation of an Act of Parliament.

\* \* \* \* \*

[698]

## ROAD AND RAIL TRAFFIC ACT (EXEMPTION) (AMENDMENT) PROVISIONAL REGULATIONS, 1938

*September 24, 1938*

Whereas in exercise of the powers vested in him under or by virtue of the Road and Rail Traffic Act, 1933, the Minister of Transport on the 11th day of May, 1938, made the Road and Rail Traffic Act (Exemption) Regulations, 1938 (hereinafter referred to as "the Principal Regulations") :

And whereas it is expedient that the provisions of the Principal Regulations should be modified in manner hereinafter appearing :

Now, therefore, in exercise of the said powers and of all other powers in that behalf vested in him the Minister of Transport hereby makes the following Regulations and further certifies under Section 2 of the Rules Publication Act, 1893, that on account of urgency such Regulations should come into force forthwith as Provisional Regulations and continue in force until Statutory Rules shall have been made in accordance with the last mentioned Act.

1. These Regulations may be cited as "The Road and Rail Traffic Act (Exemption) (Amendment) Provisional Regulations, 1938."

2. Regulation 3 of the Principal Regulations shall have effect as though the following were inserted after paragraph (j) thereof :

(k) "to the use, under the instructions of a local authority, of a vehicle for the carriage of Air Raid Precaution equipment in the course of Air Raid Precaution training or exercises."

3. The Interpretation Act, 1889, applies for the purpose of the interpretation of these Regulations as it applies for the purpose of the interpretation of an Act of Parliament.

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[699]

## PUBLIC SERVICE VEHICLES (CONDITIONS OF FITNESS) (AMENDMENT) PROVISIONAL REGULATIONS, 1938

*March 21, 1938*

Whereas in exercise of the powers vested in him under or by virtue of Section 68 of the Road Traffic Act, 1930, the Minister of Transport (hereinafter referred to as "the Minister") on the 3rd day of March, 1936, made the Public Service Vehicles (Conditions of Fitness) Regulations, 1936 (hereinafter referred to as "the Principal Regulations") ;

And whereas by the Public Service Vehicles (Conditions of Fitness) (Amendment) Provisional Regulations, 1936, the Public Service Vehicles (Conditions of Fitness) (Amendment) Provisional Regulations, 1937, the Public Service Vehicles (Conditions of Fitness) (Amendment No. 2) Provisional Regulations, 1937, and the Public Service Vehicles (Conditions of Fitness) (Amendment No. 3) Provisional Regulations, 1937, the Minister amended the Principal Regulations.

And whereas it is expedient that the provisions of the Principal Regulations should be further modified in manner hereinafter appearing.

Now, therefore, in exercise of the powers vested in him the Minister hereby makes the following Regulations and further certifies under Section 2 of the Rules Publication Act, 1893, that on account of urgency such Regulations should come into force forthwith as Provisional Regulations and continue in force until Statutory Rules shall have been made in accordance with the last mentioned Act.

1. These Regulations may be cited as "The Public Service Vehicles (Conditions of Fitness) (Amendment) Provisional Regulations, 1938."

2. The Principal Regulations shall have effect as though—

(1) sub-paragraph (iii) of paragraph (2) of Regulation 33 thereof were omitted and the following sub-paragraph were inserted in substitution therefor :

"(iii) be easily accessible to the passengers and between any such exit and some gangway there shall be a passage which shall not be of less dimensions than those prescribed in sub-paragraph (i) of paragraph (1) of Regulation 35 of these Regulations for a gangway, and all vehicles registered on or after the 1st October, 1938, shall be so designed that a vertical line projected upwards from the centre line of the passage at floor level shall, to a height of 2 feet 6 inches from the floor

level, be laterally not less than 6 inches from any part of the vehicle other than any cowling or cover which projects laterally not more than 9 inches from a bulkhead into the passage at floor level and not more than 9 inches above floor level and the provision of which is required by the projection of part of the chassis or mechanism of the vehicle into the body; provided that in all cases a seat on the upper deck of a vehicle placed below or in front of an emergency exit may be deemed to form part of such passage; and"; and

- (2) paragraph (1) of Regulation 35 thereof were omitted and the following paragraph were inserted in substitution therefor :

"(1) (i) The width of every gangway shall be not less than 1 foot up to a height of 2 feet 6 inches from the floor level, and above that height not less than 1 foot 2 inches; and

(ii) all vehicles registered on or after the 1st October, 1938, shall be so designed that a vertical line projected upwards from the centre line of any gangway at floor level shall, to the height prescribed in Regulation 36 hereof as the height of that gangway, be laterally not less than 6 inches from any part of the vehicle other than the roof over the gangway."

8. The Interpretation Act, 1889, applies for the purpose of the interpretation of these Regulations as it applies for the purpose of the interpretation of an Act of Parliament.

\* \* \* \* \*

[700]

## PUBLIC SERVICE VEHICLES (DURATION OF ROAD SERVICE LICENCES) REGULATIONS, 1938

*S. R. & O., 1938, No. 747*

*July 29, 1938*

The Minister of Transport in exercise of the powers vested in him under or by virtue of Section 40 of and the Third Schedule to the Road Traffic Act, 1934, and of all other powers in that behalf vested in him hereby makes the following Regulations :—

1. These Regulations may be cited as "The Public Service Vehicles (Duration of Road Service Licences) Regulations, 1938".

2. The Minister of Transport hereby directs that as respects licences to provide road services operated by express carriages granted after the 31st August, 1938, Sub-section (2) of Section 80 of the Road Traffic Act, 1930, shall have effect with the substitution for the words "one year" of the words "three years".

3. The Interpretation Act, 1889, applies for the purpose of the interpretation of these Regulations as it applies for the purpose of the interpretation of an Act of Parliament.

\* \* \* \* \*

[701]

## SCHOOLS

See EDUCATION ; for approved schools, see INFANTS, CHILDREN AND YOUNG PERSONS.

## SECONDARY EDUCATION

See EDUCATION.

## SEWERS AND DRAINS

### CASES :—

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### CASES

*Natural Watercourse—Discharge of Sewage—Illegal Discharge—Conversion of Watercourse into Sewer—Public Health Act, 1875 (c. 55), s. 4—Rivers Pollution Prevention Act, 1876 (c. 75), s. 3.*

A channel, for the greater part of its length in a covered culvert, ran through the plaintiffs' land. Originally the channel was a natural stream or watercourse, but at various times since 1876 sewage had been discharged into it. It was admitted that for at least twenty-three years before the pleadings in this action (*i.e.*, from 1909) some twenty houses had been drained into the channel, and it was contended that such houses had acquired prescriptive rights of so discharging sewage into it. A further forty-four houses had commenced discharging sewage into the channel at times subsequent to 1925. It was contended that the discharge of sewage into what was admittedly a natural stream at the time of the passing of the Rivers Pollution Prevention Act, 1876, being an offence under that Act, could not convert the stream or channel into a sewer within the meaning of the Public Health Act, 1875 :—

*Held* : (i) by committing the offence under the statute of pouring sewage into such a stream, it was not possible to convert the stream into a sewer within the meaning of the Public Health Act, 1875 ;

(ii) repeated acts in violation of the express terms of a modern statute passed in the public interest cannot confer any right or rights on the wrongdoer.

Order of Court of Appeal ([1936], 2 All E. R. 1367), affirmed.

*Airdrie Magistrates v. Lanark County Council*, [1910] A. C. 286 ; 41 Digest 8, 52, followed.—GEORGE LEGGE & SON, LTD. v. WENLOCK CORPORATION, [1938] A. C. 204 ; [1938] 1 All E. R. 37 ; 107 L. J. Ch. 72 ; 158 L. T. 265 ; 102 J. P. 93 ; 54 T. L. R. 315 ; 82 Sol. Jo. 133 ; 36 L. G. R. 117, H. L. [702]

## SHELL FISH, CLEANSING OF

See FOOD AND DRUGS.

## SHOPS

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## STATUTES

## THE YOUNG PERSONS (EMPLOYMENT) ACT, 1938

(1 &amp; 2 Geo. 6, c. 69.)

*An Act to regulate the laws of employment of persons under the age of eighteen years employed in certain occupations ; to amend the Shops Act, 1934, with respect to the regulation of the hours of employment of persons under the age of sixteen years, and with respect to the determination of the number of working hours of persons under the age of eighteen years ; and for purposes connected with the matters aforesaid. [703]* [29th July, 1938.]

[For Part I of this Act (ss. 1-10), see title INFANTS, CHILDREN AND YOUNG PERSONS.]

## PART II.

## AMENDMENTS RELATING TO SHOPS.

**11. Hours of employment of young persons under sixteen employed in shops.**—(1) As from the expiration of the first year after the commencement of this Act, subsection (1) of section one of the Shops Act, 1934, shall have effect, in the case of a young person who has not attained the age of sixteen years, with the substitution for the reference to forty-eight working hours of a reference to forty-four working hours. [704]

This Act commenced on January 1, 1939 ; see s. 14 (3), *post*.  
For the Shops Act, 1934, s. 1 (1), see 27 Halsbury's Statutes 226.

(2) The following section shall be inserted after section one of the Shops Act, 1934, and shall have effect as from the expiration of the first year after the commencement of this Act :—

“ 1A. The occupier of a shop may, by exhibiting a notice to that effect, secure that the provisions of this section shall be



applicable to the shop during the week within which Christmas Day falls and either the week before or the week after that week, as may be specified in the notice; and when such a notice has been duly exhibited in the prescribed form and in the prescribed manner and at such time before the period therein specified as may be prescribed, then, in relation to a young person employed about the business of the shop, who has not attained the age of sixteen years, the normal maximum working hours shall, as respects the period specified in the notice, be neither more than forty-eight in either week of that period nor more than eighty-eight throughout that period, and section one of this Act shall have effect accordingly." [705]

See the note to sub-s. (1), *ante*.

**12. Determination of number of working hours of young persons employed in shops.**—Subsection (3) of section one of the Shops Act, 1934, shall have effect as if the reference therein to employment in a factory or workshop included a reference to employment in any of the employments mentioned in subsection (1) of section seven of this Act. [706]

For the Shops Act, 1934, s. 1 (3), see 27 Halsbury's Statutes 227.

**13. Hours of young persons employed in retail trade from factory.**—Employment wholly or mainly outside a factory in collecting, carrying or delivering goods, carrying messages or running errands, being employment for the purposes of retail trade or business carried on from the factory, shall, for the purposes of subsection (5) of section fifteen of the Shops Act, 1934, be deemed not to be employment in the business of the factory and accordingly the Shops Acts shall apply with respect to that employment. [707]

For the Shops Act, 1934, s. 15 (5), see 27 Halsbury's Statutes 240.  
As to "the Shops Acts," see s. 14 (2), *infra*.

**14. Short title, interpretation, citation, commencement and extent.**—  
(1) This Act may be cited as the Young Persons (Employment) Act, 1938.

(2) In this Act the expression "the Shops Acts" means the Shops Acts, 1912 to 1936, and those Acts and Part II of this Act may be cited together as the Shops Acts, 1912 to 1938.

(3) This Act shall come into operation on the first day of January nineteen hundred and thirty-nine.

(4) This Act shall not extend to Northern Ireland. [708]

For the Shops Acts, 1912—1936, see 8 Halsbury's Statutes 613, 628, 647; 27 Halsbury's Statutes 226; and 29 Halsbury's Statutes 149, 152.

## CASES

*Hotel—Dining-room Open to Non-residents—Waiter—Shop Assistant—Weekly Half-holiday—Shops Act, 1912 (c. 3), ss. 1, 19 (1).*

A residential hotel had accommodation for about forty guests. There was only one dining-room, which was used by residents and non-residents. A waiter, wholly employed in the dining-room, was found by the justices to be mainly employed in serving meals to non-residents.

In these circumstances, the justices held that the dining-room was a shop, and the waiter a shop assistant within the Shops Act, 1912, s. 1 :—

*Held*: it followed from the findings of fact of the justices that the dining-room was a shop, and the waiter a shop assistant, within the section.—*GEORGE HOTEL (COLCHESTER), LTD. v. BELL*, [1938] 3 All E. R. 790; 159 L. T. 85; 102 J. P. 337; 82 Sol. Jo. 435; 36 L. G. R. 410, D. C. [709]

*Hours of Closing—Sale of Newly Baked Bread after Permitted Hours—Whether Newly Baked Bread Within the Exemption of “newly cooked provisions”*—*Shops (Hours of Closing) Act, 1928 (c. 33), ss. 1, 8, Sched. I (1) (b)*.

On November 3, 1937, after 8 p.m., a customer was served in respondent's shop with newly baked bread rolls, to be consumed off the premises, and another customer was served with half a loaf of newly baked bread, also to be consumed off the premises. Respondent was charged with having kept the shop open for the serving of customers after the hour of 8 p.m., in contravention of the Shops (Hours of Closing) Act, 1928, s. 1. By Sched. I (1) (b) to the said Act, it is provided that customers may be served after the said hour of 8 p.m. with, *inter alia*, “newly cooked provisions . . . to be consumed off the premises.” The magistrate dismissed the charge, holding that newly baked rolls or newly baked bread could be properly described as “newly cooked provisions.” Thereupon this appeal was brought :—

*Held*: as it was impossible to exclude newly baked rolls or newly baked bread from the scope of the expression “newly cooked provisions,” within the meaning of the exemption clause in the Act of 1928, no offence had been committed.—*LONDON COUNTY COUNCIL v. DAVIS*, [1938] 2 All E. R. 764; 159 L. T. 44; 102 J. P. 347; 54 T. L. R. 845; 82 Sol. Jo. 567; 36 L. G. R. 564, D. C. [710]

*Occupiers of Warehouse—Whether Warehouse a “shop” for Retail Trade or Business—Whether Warehouse a “place” for Retail Trade—Whether Box-tricycle a “place” for Retail Sale of Ice-cream—Shops (Sunday Trading Restriction) Act, 1936 (c. 53), ss. 11, 12, 13.*

Appellants were occupiers of a warehouse for the storage of ice cream, from which supplies were given daily to a shop assistant in their employment, to be sold by him by retail to members of the public from a movable barrow which in the course of his employment he pushed along a route specified by the appellants. He visited the warehouse only for the purpose of filling the barrow in the morning and accounting to the appellants in the evening. Appellants were charged as occupiers of a “shop” with various contraventions of the Shops (Sunday Trading Restriction) Act, 1936, ss. 11, 12, relating to the employment of assistants on Sundays and the provision of holidays as required by the Act. They were also charged with similar offences in relation to the employment of two persons who pedalled box-tricycles on the public road and stopped from time to time to sell ice cream from the tricycles by retail to passers-by. The justices convicted in each case, holding (i) that the said warehouse was a “place where retail trade or business was carried on as if that place were a shop,” within the meaning of s. 13 of the Act of 1936, and (ii) that each of the said box-tricycles was likewise a “place” within the meaning of s. 13 :—

*Held*: (i) as the warehouse was not open for the service of customers within s. 11, and was not a “place” within s. 13 of the Act of 1936,

because no retail trade or business was carried on at it, the justices were wrong in holding that the warehouse came within the definition of a "shop" in ss. 11, 13 of the Act;

(ii) a "place" within the meaning of s. 13 must be either a shop or something akin to a shop, and a box-tricycle clearly was not such a place.—*ELDORADO ICE CREAM Co., LTD. v. CLARK, ELDORADO ICE CREAM Co., LTD. v. KNIGHTON, ELDORADO ICE CREAM Co., LTD. v. KEATING*, [1938] 1 K. B. 715; [1938] 1 All E. R. 330; 107 L. J. K. B. 290; 158 L. T. 249; 102 J. P. 147; 54 T. L. R. 356; 82 Sol. Jo. 176; 36 L. G. R. 203, D. C. [711]

*Young Persons—Notices Relating to Hours—Exhibition in Folder—Sufficiency.*

*TINN v. CUNNINGHAM* (1938), 82 Sol. Jo. 435. [712]

## SLAUGHTERHOUSES AND KNACKERS' YARDS

*See REGULATED INDUSTRIES, TRADES AND BUSINESSES.*

## SLUM CLEARANCE

*See HOUSING.*

## STATUTES AND STATUTORY RULES AND ORDERS

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### STATUTES

#### THE EXPIRING LAWS CONTINUANCE ACT, 1938

(2 & 3 Geo. 6, c. 1.)

*An Act to continue certain expiring laws.* [713]

[22nd December, 1938.]

Whereas the Acts mentioned in the Schedule to this Act are, in so far as they are in force and are temporary in their duration, limited to expire—

(a) as respects those mentioned in Part I of the said Schedule, on the thirty-first day of December nineteen hundred and thirty-eight, and

- (b) as respects that mentioned in Part II of the said Schedule, on the thirty-first day of March nineteen hundred and thirty-nine :

And whereas it is expedient to provide for the continuance, as in this Act mentioned, of those Acts and of the enactments amending or affecting the same : [714]

**1. Continuance of Acts in Schedule.**—(1) The Acts mentioned in Part I of the Schedule to this Act shall, to the extent specified in column three of that Schedule, be continued until the thirty-first day of December nineteen hundred and thirty-nine.

(2) The Act mentioned in Part II of the Schedule to this Act shall, to the extent specified in column three of that Schedule, be continued until the thirty-first day of March nineteen hundred and forty.

(3) Any unrepealed enactments which are temporary in their duration shall, in so far as they amend or affect the enactments continued by the foregoing provisions of this Act, be continued in like manner whether they are mentioned in the Schedule to this Act or not. [715]

**2. Short title and application to Northern Ireland.**—(1) This Act may be cited as the Expiring Laws Continuance Act, 1938.

(2) This Act shall apply to Northern Ireland in so far as it deals with any enactment relating to a subject with respect to which the Parliament of Northern Ireland has not power to make laws, but, save as hereinbefore provided, shall not apply to Northern Ireland. [716]

## SCHEDULE

### PART I

1 Session and Chapter.	2 Short Title.	3 How far continued.	4 Amending Act.
* (4) 9 & 10 Geo. 5. c. 97.	* The Land Settlement (Scotland) Act, 1919.	* Section two — —	* 12 & 13 Geo. 5. c. 52.
* (6) 20 & 21 Geo. 5. c. 50.	* The Public Works Facilities Act, 1930.	* The following provi- sions, that is to say, section two, except the words "or statu- tory undertakers", wherever those words occur; in section three, the words from the beginning of the section to the word "undertaking"; sec- tion five; subsections (1) and (2) of section six; sections seven and eight; and the First Schedule except paragraph 2 of Part I.	* —
*	*	*	*

## PART II.

1 Session and Chapter.	2 Short Title.	3 How far continued.	4 Amending Act.
(9) Edw. 8. & 1 Geo. 6. c. 31.	The Special Areas (Amendment) Act, 1937.	The whole Act - -	—

[717]

For the Public Works Facilities Act, 1930, see 23 Halsbury's Statutes 769; Special Areas (Amendment) Act, 1937, see 30 Halsbury's Statutes 994.

As to the Public Works Facilities Act, 1930, note that s. 1, part of s. 3, and 2nd Schedule lapsed in 1935; see the Expiring Laws Continuance Act, 1935 (28 Halsbury's Statutes 349, 350). The parts of the Act remaining in force are s. 2, the opening sentence of s. 3 (see 28 Halsbury's Statutes 350), ss. 5, 6 (1), (2), 7, 8, and 1st Schedule.

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## STREET LIGHTING

*See* HIGHWAYS.

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## STREET TRADING

*See* REGULATED INDUSTRIES, TRADES AND BUSINESSES.

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# SUPERANNUATION

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## STATUTES

### THE SUPERANNUATION (VARIOUS SERVICES) ACT, 1938

(1 & 2 Geo. 6, c. 13.)

#### ARRANGEMENT OF SECTIONS

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*An Act to extend the powers conferred by certain enactments relating to superannuation so as to include power to grant the like superannuation benefits, and to permit the like allocation of superannuation benefits to spouses and dependants, as could be granted or permitted in respect of persons in the Civil Service of the State ; to provide for distribution without probate of sums not exceeding one hundred pounds due to persons to whom those enactments apply or their legal personal representatives ; and for purposes connected with the matters aforesaid. [718] [30th March, 1938.]*

**1. Extension of powers conferred by scheduled enactments.**—(1) The powers of the appropriate authority, under any of the enactments mentioned in the first column of Parts I and II of the Schedule to this Act (hereafter in this section referred to as “the scheduled enactments”), shall, subject to the provisions of this section, extend, and be deemed always to have extended, so as to include power—

- (a) to grant the like superannuation benefits to the persons to whom that enactment applies or their legal personal representatives, widows or dependants ; and
- (b) to permit the like allocation of superannuation benefits to spouses and dependants ;



as could be, or could have been, granted or permitted in respect of persons in the Civil Service of the State under the enactments, rules, regulations and warrants for the time being in force in relation to the last-mentioned persons :

Provided that nothing in this subsection shall be taken to confer power to permit such an allocation as aforesaid after the date of the commencement of this Act in the case of a person who retired from service before that date. [719]

(2) Where, by any of the scheduled enactments, the power of the appropriate authority thereunder to grant, pay or determine superannuation benefits is required to be exercised subject to the approval or sanction of the Treasury or the Board of Trade, the exercise of the powers conferred on that authority by the foregoing subsection shall be subject to the like approval or sanction. [720]

(3) Where, by any of the scheduled enactments, the power of the appropriate authority thereunder to pay or grant superannuation benefits is required to be exercised under a scheme approved by the Treasury or in accordance with regulations, the powers conferred on that authority by subsection (1) of this section shall be exercised in like manner, and the power of the authority to make a scheme or regulations shall be extended accordingly. [721]

(4) Any power of the Treasury under any of the scheduled enactments to determine that allowances and gratuities awarded under that enactment shall be paid wholly or partly out of a particular fund, shall extend to any sums allocated in pursuance of this section to the spouse or dependants of a person to whom the said enactment applies. [722]

(5) The powers conferred by this section shall be in addition to, and not in derogation of, any existing power exercisable under any of the scheduled enactments or otherwise. [723]

(6) Any amount by which the sums payable under any enactment out of moneys provided by Parliament are increased by reason of the provisions of this section shall be defrayed out of moneys so provided. [724]

(7) For the purposes of this section the expression " the appropriate authority " means, in relation to any of the scheduled enactments, the person or body specified in relation to that enactment in the second column of Part I or Part II of the Schedule to this Act. [725]

**2. Distribution of money not exceeding one hundred pounds without probate.**—(1) Where, on the death of a person to whom any of the enactments mentioned in the first column of Part I of the Schedule to this Act applies, any sum not exceeding one hundred pounds is due to that person or his legal personal representatives in respect of salary, wages or superannuation benefits, then, subject to any regulations made by the Treasury, probate or other proof of the title of the legal personal representatives may be dispensed with, and the said sum may be paid or distributed to or among the persons appearing to the appropriate authority to be beneficially entitled to the personal estate of the deceased person, or to or among any one or more of those persons, or, in the case of the illegitimacy of the deceased person or any of his children, to or among such persons as the appropriate authority may think fit, and the appropriate authority or other person responsible for

the payment of any such sum shall be discharged from all liability in respect of any such payment or distribution. [726]

(2) For the purposes of this section, the expression "the appropriate authority" means, in relation to any of the said enactments, the person or body specified in relation to that enactment in the third column of Part I of the Schedule to this Act. [727]

**3. Short title and interpretation.**—(1) This Act may be cited as the Superannuation (Various Services) Act, 1938.

(2) In this Act the expression "superannuation benefits" includes a superannuation allowance, additional allowance, annual allowance, retiring allowance, compensation allowance, gratuity, pension, compensation and annuity. [728]

Sects. 1, 2.

## SCHEDULE

### ENACTMENTS EXTENDED AND APPROPRIATE AUTHORITY THEREUNDER.

#### PART I.

#### ENACTMENTS TO WHICH SECTIONS ONE AND TWO APPLY.

Enactment.	Appropriate Authority.	
	For the purposes of section one of this Act.	For the purposes of section two of this Act.
The Caledonian and Crinan Canals Amendment Act, 1860, section thirty-two, as amended by and in pursuance of section two and subsection (2) of section thirty of the Ministry of Transport Act, 1919.	The Minister of Transport.	The Minister of Transport.
The Metropolitan Police Staff (Superannuation) Acts, 1875 to 1931, both as originally enacted and as applied by section five of the Metropolitan Police Courts Act, 1897.	The Secretary of State.	The Receiver for the Metropolitan Police District.
The Merchant Shipping Act, 1894, section six hundred and sixty-five, as amended by paragraph (c) of subsection (1) of section one of the Merchant Shipping (Mercantile Marine Fund) Act, 1898.	A general light-house authority.	A general light-house authority.
The Development and Road Improvement Funds Act, 1910, section two, subsection (1).	The Treasury.	The Development Commissioners.
The Development and Road Improvement Funds Act, 1910, section two, subsection (2).	The Development Commissioners.	The Development Commissioners.
The Electricity (Supply) Act, 1919, section one, subsection (7), as amended by and in pursuance of subsection (1) of section thirty-nine of that Act and by section fifty of, and the Sixth Schedule to, the Electricity (Supply) Act, 1926.	The Minister of Transport.	The Electricity Commissioners.
The Forestry Act, 1919, section ten, subsection (2), as amended by subsection (1) of section six of the Forestry (Transfer of Woods) Act, 1923.	The Forestry Commissioners.	The Forestry Commissioners.
The Forestry (Transfer of Woods) Act, 1923, section six, subsection (2), so far as it relates to persons who have held an office in the Civil Service.	The Treasury.	The Forestry Commissioners.

Enactment.	Appropriate Authority.	
	For the purposes of section one of this Act.	For the purposes of section two of this Act.
The Forestry (Transfer of Woods) Act, 1923, section six, subsection (2), so far as it relates to persons who have been officers employed by the Forestry Commissioners.	The Forestry Commissioners.	The Forestry Commissioners.
The Railways Act, 1921, section twenty-one, subsection (1).	The Minister of Transport.	The Minister of Transport.
The Assessor of Public Undertakings (Scotland) Act, 1934, section two.	The Secretary of State.	The Secretary of State.

## PART II.

[729]

## ENACTMENTS TO WHICH SECTION ONE APPLIES.

Enactment.	Appropriate authority for the purposes of section one of this Act.
The Ecclesiastical Commissioners (Superannuation) Act, 1865, as amended by the Superannuation (Ecclesiastical Commissioners and Queen Anne's Bounty) Act, 1914, and the Superannuation (Ecclesiastical Commissioners and Queen Anne's Bounty) Act, 1933.	The Ecclesiastical Commissioners.
The Queen Anne's Bounty (Superannuation) Act, 1870, as amended by the Superannuation (Ecclesiastical Commissioners and Queen Anne's Bounty) Act, 1914, and the Superannuation (Ecclesiastical Commissioners and Queen Anne's Bounty) Act, 1933.	Queen Anne's Bounty.

[730]

## ORDERS, CIRCULARS AND MEMORANDA

## ISLES OF SCILLY (SUPERANNUATION) ORDER, 1938

*S. R. & O., 1938, No. 74**February 4, 1938*

93924

The Minister of Health, in exercise of his powers under subsection (3) of section 42 of the Local Government Superannuation Act, 1937, and of all other powers enabling him in that behalf, hereby makes the following Order.

1. This Order may be cited as the Isles of Scilly (Superannuation) Order 1938.

2. The Interpretation Act, 1889, applies to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

3. The provisions of Parts I and III of the Local Government Superannuation Act, 1937 shall apply to the Isles of Scilly as if the Isles of Scilly were a county district wholly situate within the county

of Cornwall and the council of the Isles of Scilly were the council of that county district.

4. Article XIX of the Local Government Board's order of the 19th day of May, 1890, as altered and set out in the Schedule to the Local Government Board's Provisional Order Confirmation (No. 6) Act, 1890, shall apply to the expenses incurred or payable by the council of the Isles of Scilly under the Local Government Superannuation Act, 1937.

5. As from the coming into operation of any order made by the Minister upon the application of the council of the Isles of Scilly and in exercise of his powers under section 292 of the Local Government Act, 1933, for regulating the application of the said Act to the Isles of Scilly the last preceding Article of this Order shall cease to have effect. [781]

\* \* \* \* \*

## LOCAL GOVERNMENT SUPERANNUATION (ADMINISTRATION) REGULATIONS, 1938 \*

*S. R. & O., 1938, No. 574*

*June 10, 1938*

93727

The Minister of Health, in exercise of the powers conferred on him by subsection (6) of section 36 of the Local Government Superannuation Act, 1937, and of all other powers enabling him in that behalf, hereby makes the following Regulations.

### PART I

#### *Introductory*

1. These Regulations may be cited as the Local Government Superannuation (Administration) Regulations, 1938.

2.—(1) In these Regulations, unless the context otherwise requires, the following expressions have the respective meanings hereby assigned to them—

“appropriate administering authority” includes a local authority who will become an appropriate administering authority on the appointed day;

“contributory employee” includes an employee who will become a contributory employee on or at any time after the appointed day;

“employing authority” includes a local authority who will become an employing authority on the appointed day;

“local Act contributor” includes an employee who will become a local Act contributor on or at any time after the appointed day;

“the Act” means the Local Government Superannuation Act, 1937.

(2) For the purposes of these Regulations—

(a) a person who holds or obtains any clerkship to county or borough justices, and an employee of a whole-time clerk

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\* These Regulations supersede the provisional regulations dated the twenty-first day of December, 1937.

to justices for the purposes of his clerkship shall be treated as a person who is in or enters the employment of the council of the county or borough concerned ;

- (b) such a person as is mentioned in Part II of the First Schedule to the Act shall not be treated as a person in the employment of any local authority.

(3) The Interpretation Act, 1889, applies to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament. [732]

## PART II

### *General provisions for ascertainment of status of persons employed by local authorities before the appointed day*

3.—(1) Every local authority specified in Part I of the First Schedule to the Act and any other local authority as respects whom the Act of 1922 is in operation shall as soon as may be take into consideration the question as to which of the persons in their employment at the date of consideration will, if they remain in their employment in the posts then occupied by them until the appointed day, become on the appointed day contributory employees or local Act contributors.

(2) Having taken such action as aforesaid, every such local authority shall—

- (a) upon a person entering their employment before the appointed day ;
- (b) if before the appointed day any change occurs in the circumstances of the employment by them of an employee, being a change which is (either in their opinion or in the opinion of the employee notified by him to them in writing before the appointed day) material for the purposes of the Act, as soon as may be after the change or after receipt by them of such notification as aforesaid, as the case may be ; and
- (c) if during the continuance of the employment by them of an employee before the appointed day, the authority pass a statutory resolution for the purpose of paragraph (b) of subsection (2) of section 3 of the Act, being a resolution which is (either in their opinion or in the opinion of the employee notified by him to them in writing before the appointed day) material in relation to that employee, as soon as may be after the resolution is passed or after receipt by the authority of such notification as aforesaid, as the case may be ;

take into consideration the question whether that employee will or will not become on the appointed day a contributory employee or local Act contributor by reason of such entry into their employment, or such change in the circumstances of his employment, or the passing of such resolution, as the case may be.

(3) This Article shall not apply to any local authority who, by virtue of any enactment or statutory order passed or made before or after the commencement of these Regulations, will be dissolved on or before the first day of April, 1938.



*General provisions for ascertainment of status of persons employed by local authorities on or after the appointed day*

4. Every local authority specified in Part I of the First Schedule to the Act shall—

- (a) upon a person entering their employment on or after the appointed day ;
- (b) if during the continuance of the employment by them of an employee on or after the appointed day, any change occurs in the circumstances of his employment, being a change which is (either in their opinion or in the opinion of the employee notified by him to them in writing within six months after the change) material for the purposes of the Act, as soon as may be after the change or after receipt by them of such notification as aforesaid, as the case may be ; and
- (c) if during the continuance of the employment by them of an employee on or after the appointed day, the authority pass a statutory resolution for the purpose of paragraph (b) of subsection (2) of section 3 of the Act, being a resolution which is (either in their opinion or in the opinion of the employee notified by him to them in writing within six months after the resolution is passed) material in relation to that employee, as soon as may be after the resolution is passed or after receipt by the authority of such notification as aforesaid, as the case may be ;

take into consideration the question whether that employee was or was not a contributory employee or local Act contributor immediately after he entered their employment, immediately after the change in the circumstances of his employment, or immediately after the passing of the resolution, as the case may be.

*Decision of questions as to status, etc., by local authorities generally*

5.—(1) A local authority shall, as soon as may be after they have taken into consideration in accordance with the foregoing provisions of this Part of these Regulations any question arising as respects the employment of an employee at any date, notify their decision thereon in writing to the employee and, where the authority are an employing authority who are not the appropriate administering authority, to the appropriate administering authority.

(2) A notification of a decision by an employing authority that an employee is a contributory employee shall be accompanied by a statement showing—

- (a) whether he is an officer or servant ;
- (b) to what class he belongs or under what description he falls as such officer or servant ;
- (c) what rate of contribution he is liable to pay to the appropriate superannuation fund ;
- (d) details of the remuneration upon which contributions are payable by him ; and
- (e) the previous service (if any) which he is entitled to reckon, and the class of service into which it falls ;



Provided that the information mentioned in sub-paragraph (e) of this paragraph, if not immediately available, may be excluded from the statement but shall be furnished to the employee within six months after the decision is notified to him, and in such case the succeeding provisions of these Regulations shall have effect subject to such modifications as are necessary to secure to the employee and any appropriate administering authority concerned rights similar to those which they would have enjoyed had the information been contained in the statement.

(3) A notification of a decision by a local Act authority that an employee is a local Act contributor shall be accompanied by a statement containing the particulars mentioned in the last preceding paragraph, subject to the modification that the reference in sub-paragraph (c) of that paragraph to the appropriate superannuation fund shall be construed as a reference to the superannuation fund maintained under the local Act scheme.

*Appeals to the Minister generally on questions as to status, etc.*

6.—(1) In the event of an employee being dissatisfied with a decision of a local authority notified to him under the last preceding Article that he is or is not a contributory employee or local Act contributor he may, within three months after receipt of the notification, refer the matter to the determination of the Minister.

(2) In the event of an employee of an employing authority accepting a decision so notified that he is a contributory employee but not being satisfied as to the accuracy of any of the particulars contained in the statement accompanying the notification, he may similarly refer the matter to the determination of the Minister.

(3) In the event of the appropriate administering authority, not being the employing authority, being dissatisfied with a decision of the employing authority notified to them under the last preceding Article or in the event of their accepting a decision so notified but not being satisfied as to the accuracy of any of the particulars contained in the statement accompanying the notification, they may similarly refer the matter to the determination of the Minister.

(4) In the event of an employee of a local Act authority accepting a decision of the authority notified to him under the last preceding Article that he is a local Act contributor but not being satisfied as to the accuracy of any of the particulars contained in the statement accompanying the notification, he may at any time within three months after receipt of the notification refer the matter for determination in accordance with the provisions of the local Act scheme for the settlement of disputes arising thereunder between the authority and a local Act contributor and, forthwith upon any such reference, those provisions shall apply, with any necessary modifications, for the purpose of the determination of the matter under reference.

*Failure of local authority to decide questions*

7.—(1) If at the expiration of six months from—

(a) the twenty-first day of December, 1937 ;

(b) the date on which a person enters the employment of a local authority ;

- (c) the date on which there occurs a change in the circumstances of the employment of an employee by a local authority which is in the opinion of the local authority material for the purposes of the Act, or on which a notification is given to them by the employee under Article 3 (2) (b) or 4 (b) of these Regulations ;
- (d) the date on which a local authority pass such a resolution as is mentioned in Article 3 (2) (c) or 4 (c) of these Regulations which is in the opinion of the local authority material in relation to any employee, or on which a notification is given to them under either of those provisions by an employee ;

the local authority have not given effect to such of the foregoing provisions of this Part of these Regulations as are applicable in the case of any employee by reference to that date, the Minister may, on application made to him by the employee, direct the authority to do so within such time, not being less than one month, as may be specified in the direction.

(2) If a local authority fail to comply with a direction given by the Minister under this Article within the period therein specified, he shall at the expiration of that period determine the question to which the direction related as if a reference had been made to him thereon under Article 6 of these Regulations.

[733]

### PART III

#### *Special provisions for notification of status of persons employed by certain local authorities*

8.—(1) If a local authority, not being either a local authority specified in Part I of the First Schedule to the Act or a local Act authority, pass a statutory resolution for the purpose of paragraph (c) of subsection (2) of section 3 of the Act, they shall notify the fact in writing to the employee who is in the resolution specified as a contributory employee, and the notification shall be accompanied by a statement containing the particulars mentioned in sub-paragraphs (a) and (c) to (e) of paragraph (2) of Article 5 of these Regulations.

(2) Such a local authority as aforesaid shall, upon a person entering their employment on or after the appointed day, take into consideration the question whether that employee was or was not, by virtue of being such a transferred poor law employee as is mentioned in paragraph 2 or 8 of Part I of the Second Schedule to the Act, a contributory employee immediately after he entered their employment, and, as soon as may be after they have taken the said question into consideration, notify their decision thereon in writing to the employee.

(3) A notification of a decision by a local authority under the last preceding paragraph that an employee is a contributory employee shall be accompanied by a statement containing the particulars mentioned in paragraph (2) of Article 5 of these Regulations.

9. If a local education authority for elementary education who are not a local Act authority duly pass a resolution for the purpose of paragraph (f) of subsection (2) of section 3 of the Act, they shall notify the fact in writing to the employee who is in the resolution specified as a contributory employee, and the notification shall be accompanied

by such a statement as is mentioned in paragraph (1) of Article 8 of these Regulations.

10. A local authority specified in Article 8 of these Regulations and a local education authority, where they are not the appropriate administering authority, shall, whenever they give to an employee a notification under Article 8 or 9 of these Regulations, send a copy of the notification and accompanying statement to the appropriate administering authority.

*Appeals to the Minister as to status in special cases*

11.—(1) In the event of an employee of such a local authority as is mentioned in paragraph (1) of Article 8 of these Regulations being dissatisfied with a decision of the authority, notified to him under paragraph (2) of that Article, that he is not, by virtue of the statutory provisions therein mentioned, a contributory employee, he may, at any time within three months after receipt of the notification, refer the matter to the determination of the Minister.

(2) In the event of the appropriate administering authority, not being the employing authority, being dissatisfied with a decision of the employing authority as notified to them under Article 10 of these Regulations that an employee is, by virtue of the statutory provisions mentioned in paragraph (2) of Article 8 of these Regulations, a contributory employee, they may similarly refer the matter to the determination of the Minister.

*Appeals to the Minister as to incidence of status*

12.—(1) In the event of an employee of such an authority as is mentioned in paragraph (1) of Article 8 or in Article 9 of these Regulations not being satisfied as to the accuracy of any of the particulars contained in the statement accompanying a notification received by that employee under paragraph (1) or (3) of Article 8 or under Article 9 he may, at any time within three months after receipt of the notification, refer the matter to the determination of the Minister.

(2) In the event of an employee of such a local authority as is mentioned in paragraph (1) of Article 8 of these Regulations accepting a decision of the authority notified to him under paragraph (2) of that Article that he is a contributory employee but not being satisfied as to the accuracy of any of the particulars contained in the statement accompanying the notification, he may similarly refer the matter to the determination of the Minister.

(3) In the event of the appropriate administering authority, not being the employing authority, not being satisfied as to the accuracy of any of the particulars contained in any copy statement accompanying a notification received by them under Article 10 of these Regulations, they may similarly refer the matter to the determination of the Minister.

*Failure of local authority to decide questions*

13.—(1) If at the expiration of six months from the date on which a person on or after the appointed day enters the employment of such a local authority as is mentioned in paragraph (1) of Article 8 of these Regulations, the local authority have not given effect to the provisions of paragraph (2) of that Article, the Minister may, on application made

to him by the employee, direct the authority to do so within such time, not being less than one month, as may be specified in the direction.

(2) If a local authority fail to comply with a direction given by the Minister under this Article within the period therein specified, he shall at the expiration of that period determine the question to which the direction related as if a reference had been made to him thereon under Article 11 of these Regulations.

[734]

## PART IV

### *Supplementary*

14. Every local authority in whose employment there is any contributory employee or local Act contributor, shall cause a record to be kept in such form as the local authority think fit for the purpose of making readily available, at all times, information as to the name of every employee who is a contributory employee or local Act contributor and such other particulars relating to the employee as are specified in the First Schedule to these Regulations.

15.—(1) The council of a county district, forthwith upon giving effect to the provisions of paragraph (1) of Article 3 and paragraph (1) of Article 5 of these Regulations, shall make a preliminary return to the Minister, in the form set out in Part A of the Second Schedule to these Regulations, of the estimated number of persons who will be in their employment on the first day of October, 1938, and who will be contributory employees if they remain in the employment of the council in the same posts until the appointed day, or if no persons are so employed, shall make a return to that effect.

(2) Such return shall be made not later than the 30th day of June, 1938.

(3) Every such council as aforesaid shall, not later than the first day of November, 1938, make a further return, in the form set out in Part B of the Second Schedule to these Regulations, showing the number of persons in their employment on the first day of October, 1938, who will be such contributory employees as aforesaid, and such other particulars as are specified in the form.

(4) Whenever a return is made to the Minister under this Article by a council, they shall send a copy thereof to the council of the county within whose area the district of the council is situate.

16. A notification of a decision by a local authority to an employee under any of the provisions of Part II or Part III of these Regulations shall contain a note directing the attention of the employee to his rights under the Regulations in relation to the reference of the decision or of any question as to the accuracy of any of the particulars contained in the statement accompanying the notification of the decision to the determination of the Minister or for determination in accordance with the provisions of the local Act scheme, as the case may require.

17. Save as otherwise expressly provided, nothing in these Regulations shall in any way affect, abridge or prejudice the exercise by the Minister of any powers vested in him by section 35 of the Act. [735]

## FIRST SCHEDULE

Particulars to be recorded by local authorities in respect of contributory employees or local Act contributors :—

Name of employee.

Date of birth.

Whether officer or servant.

Class or description.

Whether whole-time or part-time employment.

If part-time employment, what proportion of whole-time employment this represents.

Rate of contribution.

Details of remuneration on which contributions are payable.

Details of previous local government service of employee, showing each local authority by whom employed, dates of commencement and termination of each employment, whether whole-time or part-time employment, and, if the latter, what proportion of whole-time employment this represented, and in what manner the service is reckonable under the Act, or the local Act scheme, as the case may be.

Periods of sick leave after attaining the age of 55 years (or 50 years in the case of female nurses, midwives and health visitors).

## SECOND SCHEDULE

*Form of Return of Contributory Employees*

Name of { Borough  
Urban District } .....  
Rural District }

Name of County.....

## PART A \*

*Preliminary return to be made not later than 30th June, 1938*

Estimated number of persons in the employment of the above mentioned Council on 1st October, 1938, who will be contributory employees if they remain in the employment of the Council in the same posts until 1st April, 1939 ... ..

Date.....

Signed.....

Clerk of the Council.

\* *Strike out Part A if inapplicable.*

## PART B \*

*Return to be made not later than 1st November, 1938*

Number of persons in the employment of the above mentioned Council on 1st October, 1938, who will be contributory employees if they remain in the employment of the Council in the same posts until 1st April, 1939 ... ..

\* *Strike out Part B if inapplicable.*



Statement as to position at 1st October, 1938, in regard to the Local Government and other Officers' Superannuation Act, 1922 :—

- (a) \* The Council maintains a superannuation fund under the Act of 1922.
- (b) \* The Council are a constituent authority of a combination scheme under Section 5 (1) of the Act of 1922.
- (c) \* The Council have employees contributing to the superannuation fund of.....under an admission agreement made in accordance with the provisions of section 5 (3) (a) of the Act of 1922.
- (d) \* The Council have made no arrangements under the Act of 1922.

Date.....

Signed.....

Clerk of the Council.

\* *Strike out this paragraph if inapplicable.*

\* \* \* \* \*

[736]

## CASES

*Crown Practice—Certiorari—Dispute to be Determined by Minister of Health—Decision to be Final—Whether Subject to Certiorari—Asylums Officers' Superannuation Act, 1909 (c. 48), ss. 10, 11, 15.*

W. commenced his employment as a shoemaker in a county mental hospital in 1915 during the War. His employment was at first considered temporary, but, in fact, it was continued until 1934. He was never considered by the committee as a permanent employee, and they at all times refused to accept from him subscriptions in respect of the superannuation allowance. After the termination of his employment, his application for a superannuation allowance was refused by the committee, but granted by the Minister on appeal. The Asylums Officers' Superannuation Act, 1909, s. 15, provides that the decision of the Minister shall be final. The difference between the view taken by the Minister and that taken by the committee was, shortly, whether, upon the proper construction of the Act, an officer who had served less than twenty years could be entitled to an allowance. A rule *nisi* for *certiorari* was granted for the decision of the Minister to be quashed, on the ground that the Minister had acted without jurisdiction :—

*Held* : the Minister had not acted without jurisdiction, and, although his decision was in effect the construction of the provisions of the Act of 1909, it could not be questioned by the grant of a writ of *certiorari*.

Decision of the Divisional Court (Lord HEWART, L.C.J., BRANSON and HUMPHREYS, JJ.) ([1938] 1 All E. R. 344), affirmed.—*R. v. MINISTER OF HEALTH, Ex p. COMMITTEE OF VISITORS OF GLAMORGAN COUNTY MENTAL HOSPITAL*, [1938] 4 All E. R. 32; 159 L. T. 508; 102 J. P. 497; 55 T. L. R. 4; 82 Sol. Jo. 869, C. A. [737]

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## SURCHARGE

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## TOWN AND COUNTRY PLANNING

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*Agreement Restricting Planning in Lieu of Scheme—Agreement Alleged to Have Been With a Committee of Local Authority—Power of Local Authority to Delegate to Committee—Agreement Relating to Planning Development or User, but Alleged to be More Favourable to Landowner than Draft Scheme—Whether Interim Development Order Required—Town and Country Planning Act, 1932 (c. 48), ss. 34, 48, 54—Local Government Act, 1933 (c. 51), s. 85.*

In 1935 and 1936, a local authority for the purposes of the Town and Country Planning Act, 1932, entered into two agreements with a club with regard to the development of its property situate in its area. In 1938, a ratepayer of the borough instituted these proceedings claiming that each of the two agreements was *ultra vires* the borough council on the grounds (i) that the agreements resulted from the delegation by the council of powers conferred on it by the Town and Country Planning Act, 1932, to a joint committee which, it was alleged, was constituted by the council under the power conferred on it by s. 48 of the Act of 1932, but without regard to, and in contravention of, the provisions of that section; (ii) that the agreements, which purported to have been entered into by the council in exercise of the powers conferred on it by s. 34 of the Act of 1932, were not in fact authorised by that section, because neither agreement restricted the planning, development or use of the land in question in the manner contemplated according to a true construction of the section, but were in fact permissive, because the club, by reason of the agreements, was in a position to plan, develop and use its land in a manner more favourable to the club than was provided in the draft planning scheme proposed to be adopted by the council, and without making application for an interim development order, as required by the Act, if the club should desire to plan, develop or use its land before any planning scheme should come into operation; (iii) that the agreement of 1935 contained provisions which could not have been incorporated in a planning scheme under the Act of 1932,

and was therefore unauthorised under the provisions of s. 34. There was no dispute of fact, and counsel for the parties agreed that the agreement of 1936 must stand or fall with the agreement of 1935 :—

*Held* : (i) the council had not appointed a committee either under s. 48 of the Act or at all, as alleged, nor had it delegated any of its powers under the Act of 1932. The agreement of 1935 was submitted to, and approved by, the council, and sealed by the mayor on the authority of a resolution of the council. It was by virtue of this resolution alone that the agreement was entered into, and its execution was not in any sense the act of any committee. The council had delegated to the town-planning scheme clauses sub-committee the final settlement of three subsidiary matters referred to in the resolution, and they were authorised to make such a delegation by the Local Government Act, 1933, s. 85 ;

(ii) upon a true construction of s. 34 of the Act of 1932, the council, as an authority under the Act, had at all material times power to enter into an agreement with the club restricting the future planning, development or use of its land, provided that such restrictions were such as might be dealt with by or under a scheme under the Act of 1932 ;

(iii) the provisions in the agreement of 1935 restricting the planning, development and use of the club's land were real restrictions on the future planning and development of the land the subject-matter of the agreement. All the provisions of the agreement of which complaint was made were such as could be properly included in a planning scheme. —*A.-G. v. BARNES BOROUGH COUNCIL AND RANELAGH CLUB, LTD.*, [1938] 3 All E. R. 711 ; 107 L. J. Ch. 385 ; 159 L. T. 305 ; 102 J. P. 448 ; 54 T. L. R. 1102 ; 82 Sol. Jo. 646. [738]

*Restriction on Development—Who May Prosecute—Restriction of Ribbon Development Act, 1935.*

In a question as to whether a county council, as highway authority, were entitled to prosecute for a contravention of Restriction of Ribbon Development Act, 1935, s. 2 (1) (b) :—

*Held* : while s. 11 had authorised the highway authority to recover by civil process the expense of demolition, incurred by them in their administrative capacity in consequence of a contravention of s. 2 (1) (b), it had not, either expressly or by implication, empowered the authority to prosecute for offences against the Act, and accordingly, the only person entitled to do so was the Lord Advocate or his representative, as the public prosecutor.—*INVERNESSHIRE COUNTY COUNCIL v. WEIR*, [1938] S. C. (J.) 11. [739]

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## TOWN PLANNING AGREEMENTS WITH OWNERS

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## UNEMPLOYMENT

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### ORDERS, CIRCULARS AND MEMORANDA

#### UNEMPLOYMENT ASSISTANCE (WINTER ADJUSTMENTS) REGULATIONS, 1938

*S. R. & O.*, 1938, No. 806

*August 5, 1938*

Whereas the Minister of Labour in pursuance of the powers conferred on him by the Unemployment Assistance Act, 1934 (hereinafter referred to as "the Act") duly made, for the purposes of the Act, the Unemployment Assistance (Determination of Need and Assessment of Needs) Regulations, 1936 (hereinafter referred to as "the principal Regulations");

And whereas it is expedient that further provision should be made for the purposes aforesaid;

And whereas the provisions of sub-sections (2) and (3) of section 52 of the Act were duly complied with and the Minister made and laid before Parliament Draft Regulations;

And whereas each House of Parliament by resolution duly approved the said Draft Regulations;

Now therefore the Minister by virtue of the powers conferred on him by sections 38 and 52 of the Act and of all other powers in that behalf hereby makes the following Regulations in the terms of the draft so approved as aforesaid.

1.—(1) These Regulations may be cited as the Unemployment Assistance (Winter Adjustments) Regulations, 1938, and these Regulations and the principal Regulations may be cited together as the Unemployment Assistance (Determination of Need and Assessment of Needs) Regulations, 1936 and 1938.

(2) These Regulations shall come into force on the date hereof.

(3) The Interpretation Act, 1889, applies to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

2. Without prejudice to the generality of any power of adjustment conferred by the principal Regulations, the amount at which the needs of an applicant for an allowance under the Act would be assessed in accordance with those Regulations may, in a case where special needs due to winter conditions exist, be increased to meet such needs by such amount as is reasonable in all the circumstances of the case. [740]

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## UNEMPLOYMENT INSURANCE

*See NATIONAL HEALTH AND UNEMPLOYMENT  
INSURANCE.*

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## UNEMPLOYMENT RELIEF WORKS

*See UNEMPLOYMENT.*

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## UNSOUND FOOD

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## URBAN DISTRICT COUNCIL ACCOUNTS

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<i>Barnes v. Irwell Valley Water Board</i> , [1938] 2 All E. R. 650, C. A. - - - - -	402	<i>Read v. Croydon Corporation</i> , [1938] 4 All E. R. 631 - - -	403

## CASES

*Pipeline Constructed by Agreement—Easements—Pipes Passing Through Land not Contiguous to Reservoirs or Works—Whether Easement in Gross.*

Defendant board became in 1920 the successors of the Weardale and Shildon District Waterworks Co., which had been incorporated by statute in 1866, its powers being extended by Acts of 1875 and 1879. Under the 1879 Act the Weardale Co. acquired the right to lay a line of pipes along a line shown on a deposited plan, with a permitted deviation. In 1880 it became necessary to lay pipes through land belonging to the predecessor in title of the present plaintiffs, and, as this could not be effected by exercising its rights under the 1879 Act, the land being outside the permitted deviation, it entered into an agreement whereby, in consideration of the payment of a yearly rent charge of £3, the company was granted the right to lay pipes through this land. This land subsequently passed through several hands, during which the yearly payment of £3 was regularly made, until finally it became vested in fee simple in plaintiffs. They contended that the grant was not binding

upon them, as the acquisition of the rights thereunder was *ultra vires* the company, and that it had never been enforceable. Alternatively, they contended that it was merely a personal licence, not binding on the grantor's successors, and that, as there was no dominant tenement contiguous to the land in which the pipes were laid, it was an attempt to create an easement in gross :—

*Held* : (i) as the consent of the owner of the land to the laying of the pipes was obtained by agreement, and not by compulsion, the company was not acting *ultra vires* in acquiring the rights under the grant ;

(ii) the undertaking of the company consisted of corporeal hereditaments, namely, land for the erection of reservoir and other similar purposes, and incorporeal hereditaments, namely, the rights required in the land of others to lay pipes and for other purposes and so was capable of being a dominant tenement in respect of the grant although the company had no contiguous land ;

(iii) the easement was one which was intended to be, and was capable of being, used and exercised in connection with the undertaking of the company, and was one which the then owner of the land could validly grant, and was binding upon his successors in title.—*Re SALVIN'S INDENTURE, PITT v. DURHAM COUNTY WATER BOARD*, [1938] 2 All E. R. 498 ; 82 Sol. Jo. 395 ; 36 L. G. R. 388. [741]

*Grant of Water Rights as Now Enjoyed—Extent of Grant—Right to Make Additional Connections.*

Plaintiffs were the owners in fee simple and the tenant of a farm which had been sold to their predecessors in title in 1923. The 1923 conveyance contained the words “. . . together with the right as now enjoyed in common with others having the same right to the water supply to the hereditaments hereinbefore described through pipes from a spring. . . .” In 1933 whatever rights had been conveyed to the then purchasers in 1923 passed to plaintiffs. In 1934 defendants, a local authority, acquired the pipes and water rights which constituted the water supply to the farm. As a result of the construction of additional service pipes by defendants, the supply of water to the farm was decreased. Plaintiffs sought an injunction to restrain the defendants from making these alterations :—

*Held* : upon the construction of the deed of 1923 the right conveyed was one to have the residue of the water after the then existing branches had been supplied through service pipes of the diameter then used.

Decision of FARWELL, J. ([1937] 4 All E. R. 348), reversed on this point.—*BEAUCHAMP v. FROME RURAL DISTRICT COUNCIL*, [1938] 1 All E. R. 595 ; 54 T. L. R. 476 ; 82 Sol. Jo. 213 ; 36 L. G. R. 377, C. A. [742]

*Domestic Purposes—Purity of Supply—Pure While in Mains—Water Dissolving Lead—Statutory Duty—Common Law Duty to Warn Persons Supplied.*

The plaintiffs were supplied with water for domestic purposes by the defendant water board. It was proved that the water was pure so long as it was in iron pipes, but in its passage through lead pipes it dissolved lead and became poisonous. The only lead piping through which the supply was passed was a length of 6 feet before the stop-cock was reached, and the pipes upon the plaintiffs' premises, which had been inspected by the board. The plaintiffs, by drinking the water supplied, had contracted lead poisoning :—



*Held* : (i) the board had not been guilty of any breach of statutory duty, as the supply of water up to the turn-cock was pure and wholesome ;

(ii) the board had been negligent, in that it should either have taken steps to reduce the plumbo-solvency of the water, or have warned consumers that the water, if passed through lead pipes, was liable to be dangerous to health. The plaintiffs were therefore entitled to recover.

Decision of Mr. Commissioner HENN COLLINS, K.C. ([1937] 4 All E. R. 675), affirmed.—*BARNES v. IRWELL VALLEY WATER BOARD*, [1938] 2 All E. R. 650 ; 107 L. J. K. B. 629 ; 159 L. T. 125 ; 102 J. P. 373 ; 54 T. L. R. 815 ; 82 Sol. Jo. 394 ; 36 L. G. R. 493, C. A. [748]

*Purity of Supply—Water Infected by Typhoid Bacillus—Infant Plaintiff Contracting Typhoid—Negligence—Breach of Contract—Sale of Goods—Breach of Warranty—Breach of Statutory Duty—Nuisance—Sale of Goods Act, 1893 (c. 71), s. 14—Waterworks Clauses Act, 1847 (c. 17), s. 35—Public Health Act, 1936 (c. 49), ss. 111, 115.*

Defendant corporation owned and maintained two water wells, the Addington and Stroud Green wells, for the purpose of supplying water to residents of the borough. The adult plaintiff was a ratepayer in the said borough, and the infant plaintiff, his daughter, resided with him in the house in respect of which he paid the water rate. It was admitted that, as a result of drinking water supplied from the Addington well, the infant plaintiff contracted typhoid. The infant plaintiff claimed damages in respect of her illness, and the adult plaintiff claimed certain special damage incurred in consequence of that illness. It was found upon the facts that defendants had not been negligent in the selection of the gathering ground, nor in the selection and supervision of its workmen, but that they had been negligent in that, during the carrying out of certain work at the Addington well, precautions in the form of continual analysis of the water, searching inquiry into the antecedents of the workmen, and incessant supervision over them, were not taken. Plaintiffs contended, *inter alia*, (i) that the failure, on the part of defendant corporation, to supply pure and wholesome water, amounted to common law negligence, (ii) that there was a contract for the sale of goods—namely, water—and that there was a breach of the implied warranty contained in the Sale of Goods Act, 1893, s. 14, (iii) that, apart from the Sale of Goods Act, 1893, s. 14, there was a breach of contract for the rendering of services—namely, the supply of water—which included an implied warranty similar to that contained in the Sale of Goods Act, 1893, s. 14, and (iv) that defendants were guilty of breaches of their statutory duty under the Waterworks Clauses Act, 1847, s. 35, and under the Public Health Act, 1936, ss. 111, 115. Defendants contended, *inter alia*, (i) that they were not guilty of common law negligence, (ii) that there was no contract for the sale of goods or otherwise, and (iii) that they were under no duty to plaintiffs either under the Waterworks Clauses Act, 1847, or under the Public Health Act, 1936, and, alternatively, that, if they were under any such duty or duties, the breach thereof conferred no right of action upon the plaintiffs :

*Held* : (i) defendants were guilty of negligence at common law ;

(ii) where one person is by statute bound to supply water and another is entitled to receive it, there is no contractual relationship between these two persons, although the rights and obligations arising out of a

statutory provision may be similar to, or identical with, those arising out of an ordinary contract ;

(iii) defendants were guilty of a breach of statutory duty under the Waterworks Clauses Act, 1847, s. 35, but that breach conferred a right of action upon a ratepayer only, and not upon persons resident in his household. This remedy was, therefore, confined to the adult plaintiff ;

(iv) although the Waterworks Clauses Act, 1847, provides a penalty for a breach of a statutory duty, upon the proper construction of that Act, this is not an exclusive remedy, and an action for damages can also be brought in respect of a breach of that duty.—*READ v. CROYDON CORPORATION*, [1938] 4 All E. R. 631 ; 55 T. L. R. 212 ; 82 Sol. Jo. 991. [744]

## WEIGHTS AND MEASURES

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### ORDERS, CIRCULARS AND MEMORANDA

#### STANDARDS DEPARTMENT FEES ORDER, 1938

*S. R. & O.*, 1938, No. 709

July 26, 1938

By virtue of the powers conferred upon them by Section 8 of the Weights and Measures Act, 1889 (52 & 53 Vict. c. 21) and Section 6 of the Weights and Measures Act, 1904 (4 Edw. 7, c. 28) and of all other powers, if any, enabling them in that behalf, the Board of Trade with the approval of the Treasury hereby make the following Order :—

1. The following fees shall be taken at the Standards Department of the Board of Trade for the examination and testing under Section 6 of the Weights and Measures Act, 1904, of each and every pattern of measure as defined by the Weights and Measures (Sand and Ballast) Regulations, 1938 (*S. R. & O.* 1938, No. 236) :—

Patterns of brim measure	—	—	each £10
Patterns of common measure	—	—	each £20

2. This Order may be cited as the Standards Department Fees Order, 1938. [745]

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## WEIGHTS AND MEASURES (VERIFICATION AND STAMPING FEES) ORDER, 1938

*S. R. & O., 1938, No. 634*

*June 23, 1938*

At the Court at Buckingham Palace, the 23rd day of June, 1938

PRESENT,

The King's Most Excellent Majesty in Council

Whereas by virtue of the powers conferred upon Him by Section 9 of the Weights and Measures Act, 1904 (4 Edw. 7, c. 28), His Majesty was pleased by Order in Council dated the 12th day of January, 1905 (S. R. & O. 1905, No. 11) (hereinafter called "the Principal Order"), to specify new fees to be paid in respect of the verification and stamping of weights, measures and weighing and measuring instruments in substitution for the fees specified in the First Schedule to the Weights and Measures Act, 1889 (52 & 53 Vict. c. 21) :

And whereas the Principal Order has been varied from time to time by divers subsequent Orders in Council made by virtue of the aforesaid powers of His Majesty and the provisions of subsection (2) of Section 3 of the Weights and Measures (Amendment) Act, 1926 (16 & 17 Geo. 5, c. 8) :

And whereas by subsection (3) of Section 2 of the Weights and Measures Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 38), it is enacted that every receptacle (whether forming part of a vehicle or not) which, for the purpose of trade, is used or intended to be used in measuring sand or ballast by the cubic yard shall, subject as thereafter provided, be deemed for the purposes of the Weights and Measures Acts, 1878 to 1926, to be a measure :

And whereas the Board of Trade have represented to His Majesty that it would be expedient further to vary the Principal Order and to specify new fees to be paid on the verification and stamping of receptacles deemed to be measures as aforesaid, which said receptacles are hereinafter referred to as sand and ballast measures :

Now, therefore, His Majesty, by virtue of the powers vested in Him as aforesaid and of all other powers enabling Him in that behalf, by and with the advice of His Privy Council, is pleased to order, and it is hereby ordered, as follows :—

1. This Order may be cited as the Weights and Measures (Verification and Stamping Fees) Order, 1938, and shall come into force on the 1st July, 1938.

2. The fees specified in the Schedule hereto shall be paid in respect of the verification and stamping of the sand and ballast measures mentioned in the said Schedule.

3. The fees specified in the Schedule hereto shall likewise be paid in respect of any sand and ballast measure which on verification is found to be incorrect or defective.

*M. P. A. Hankey.*

## SCHEDULE

	<i>s.</i>	<i>d.</i>
1. Each regulation brim measure—		
(a) When verified and stamped at the Inspector's office -	2	6
(b) When verified and stamped at any other place an additional fee of 5 <i>s.</i> for each measure tested shall be payable.		
2. Each certificated brim measure—		
(a) When verified and stamped at the Inspector's office -	5	0
(b) When verified and stamped at any other place an additional fee of 7 <i>s.</i> 6 <i>d.</i> for each measure tested shall be payable.		
3. Each tip-cart measure or common measure—		
(1) When verified by testing the internal linear dimensions :		
(a) When verified and stamped at the Inspector's office.		
For the first calibration mark tested - -	5	0
For each subsequent calibration mark tested	1	0
(b) When verified and stamped at any other place an additional fee of 5 <i>s.</i> for each measure tested shall be payable.		
(2) When verified by comparison with a brim measure :—		
(a) When verified and stamped at the Inspector's office.		
For each calibration mark tested - -	2	6
(b) When verified and stamped at any other place an additional fee of 7 <i>s.</i> 6 <i>d.</i> for each measure tested shall be payable.		
4. Notwithstanding the foregoing, when more than two measures are submitted for verification and stamping on the same occasion, at some place other than the Inspector's office, the total amount of additional fees payable in respect of all the measures so submitted shall not exceed 15 <i>s.</i> [746]		

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## WHARVES

*See* HARBOURS, DOCKS AND WHARVES.

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[1938] 3 All E. R. 585	407		

*Workmen's Compensation—Employment by Local Authority Under Scheme for Relief of Unemployment—Employment for Nine Weeks—Whether Employment Casual—Workmen's Compensation Act, 1925 (c. 84), ss. 8 (2), 10.*

Appellant council had employed a workman under a scheme for the relief of unemployment. Under this scheme, men who had been unemployed for a considerable time were employed for a period of nine weeks, after which it was unlikely that they would be further employed by appellants for a considerable time. During the ninth week of such employment, the workman met with an accident arising out of and in the course of his employment, and died. It was contended for appellants that this employment was of a casual type, and was of such short duration that it could not afford a basis of assessment of average weekly earnings, so that the case came within the proviso to the Workmen's Compensation Act, 1925, s. 10 :—

**Held:** (i) nine weeks was an ample period of time upon which to base an assessment of average weekly earnings, and the case came within s. 8 (2) of the Act;

(ii) the court must look at the nature of the employment, and not at the motive actuating an employer when he employs a workman.—*SUMMERS v. RHONDDA URBAN DISTRICT COUNCIL*, [1938] 3 All E. R. 585; 159 L. T. 373; 102 J. P. 459; 54 T. L. R. 1113; 82 Sol. Jo. 681, C. A. [747]

*Workmen's Compensation—Hospital Nurse—Injury While Preparing a Poultice—Whether Working under a Contract of Service—Workmen's Compensation Act, 1925 (c. 84), s. 3.*

The appellant was employed by the respondent council as a hospital nurse. She was fully qualified, and was normally under the control of a hospital sister, who would tell her what to do but not how to do it. While preparing a poultice to be applied to a patient—which operation required heating the poultice in a tin—an explosion occurred, and she was injured. The respondent council maintained that she was employed under a contract for services and not a contract of service, and was not, therefore, within the provisions of the Workmen's Compensation Acts :—

*Held* (GREER, L.J., dissenting): the appellant was employed under a contract of service, and was entitled to compensation under the Acts.

*Hillyer v. St. Bartholomew's Hospital (Governors)*, [1909] 2 K. B. 820; 84 Digest 26, 52, distinguished; *WARDELL v. KENT COUNTY COUNCIL*, [1938] 2 K. B. 768; [1938] 3 All E. R. 478; 159 L. T. 337; 102 J. P. 482; 54 T. L. R. 1026; 82 Sol. Jo. 663; 36 L. G. R. 654, C. A. [748]





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